

***Commission for Real Property Claims of  
Displaced Persons and Refugees (CRPC)***

***End of Mandate Report  
(1996 - 2003)***

**Commission for Real Property Claims of Displaced Persons and Refugees**  
**Executive Summary:**  
**End of Mandate Report (1996-2003)<sup>1</sup>**

## **Introduction**

The International Community since the signing of the Dayton Peace Agreement has focused on refugee return and the establishment of the rule of law as a starting point, an essential requirement, for capacity building and economic development. Property rights were taken away during the war in Bosnia and Herzegovina (BiH) and ensuring that they were returned was central to establishing peace. It was agreed at the signing of the Dayton Peace Agreement that an independent body would be created to ensure that impartial legally binding decisions would be made to guarantee the rights of all those who lost their property to be able to return or gain compensation for their loss.

By the end of 2003, the body established with the mandate to issue decisions, the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC or the Commission) had issued over 300 000 final and binding decisions confirming property rights, representing an estimated total beneficiary population of almost one million people. The “CRPC Certificate”, issued by CRPC to those who applied to regain their property, over time evolved into a document that carried with it the full force of law.

Throughout its mandate, CRPC has had the support and assistance of the BiH Ministry of Foreign Affairs, the Federation of BiH Ministry of Defense, the BiH Ministry of Justice and the excellent cooperation of both the BiH Ministry of Human Rights and Refugees and the BiH Archives in the transfer process. Additionally, the remarkable teamwork and exchange of ideas between CRPC, OHR, OSCE, and UNHCR, and the financial contributions, led by the European Commission, from numerous governments has made the work of the Commission a shared success.

This End of Mandate Report documents CRPC’s achievements from the starting point of its mandate to its transfer to the Government of BiH.

## **Mandate and structure**

CRPC was created under Annex 7, Chapter 2 of the Dayton Peace Agreement. Its mandate was to impartially and independently resolve property issues for an estimated 2.2 million refugees and displaced persons (RDPs) who lost their homes during the war in BiH.

From 1996 to 2000, CRPC focused on collecting claims, obtaining evidence, issuing decisions and advocating for the implementation of its decisions by domestic bodies. Furthermore, it contributed to domestic property law reform. In the course of its renewed three-year mandate from 2001 to 2003, CRPC revised its rules and regulations in light of evidentiary and legal developments, restructured its organisation and certificate delivery system, and planned for and implemented the transfer of its functions to the Government of BiH.

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<sup>1</sup> This Executive Summary is a part of and attached to the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC): End of Mandate Report (1996-2003) (End of Mandate Report). Terms not otherwise defined in this Executive Summary are defined in the body of the End of Mandate Report. A full Statistical Summary is attached to the End of Mandate Report as Annex A.

CRPC was headquartered in Sarajevo and was composed of nine Commissioners. Three were International Commissioners appointed by the President of the European Court of Human Rights, and six were National Commissioners, two appointed by Republika Srpska and four appointed by the Federation of BiH. This resulted in an ethnically balanced membership (two Bosnians, two Croats, and two Serbs). The Executive Office of CRPC had on average a staff of 200-300 people during most years of operation. CRPC maximized usage of national experts who brought invaluable knowledge of the national languages, structures, legal systems and laws.

CRPC actively participated in joint efforts by the international community to reach all categories of the population affected by laws from the war regimes and inform them of new laws and procedures to claim property and request implementation. These efforts resulted in multiple information campaigns launched by CRPC and targeted to refugees abroad as well as displaced persons throughout BiH.

### **CRPC collected claims for more than three hundred thousand properties**

During its mandate, CRPC collected a total of 240 233 claims for 319 220 properties for 360 246 claimants. This represented an estimated total beneficiary population of approximately one million. CRPC employed staff in regional offices and mobile teams in the countries of former Yugoslavia, as well as in Europe, in order to effectively reach claimants.

### **CRPC extensively collected and verified evidence**

Cadastre and property book records had been destroyed, moved or altered during the war in BiH and were mostly inaccessible to claimants who still faced danger in moving around the country. Consequently, CRPC's rules allowed for claims to be submitted without evidence, in which cases obtaining this evidence became essential to CRPC's ability to issue final and binding decisions. To maximise efficiency in evidence collection, CRPC collected data for and then increasingly used its in-house-developed cadastre land survey databases, rather than undertaking field investigations by its own expert teams. Owing to the extensive Cadastre Database CRPC created, CRPC could quickly verify claims for property in 80% of pre-war municipalities.

### **CRPC issued over three hundred thousand final and binding decisions confirming property rights**

CRPC issued its first decisions in October 1997 and by December 2003 it had issued 311 757 decisions in total. Armed with a final and binding CRPC decision that confirmed their property rights as of 1 April 1992, claimants could legally pursue the following options: return to their pre-war homes; sell or exchange their property; rent their property; or preserve their rights to exercise at a later date. Regardless of the option chosen, claimants could obtain a solution.

### **CRPC delivered certificates to decision holders**

CRPC successfully delivered 232 268 or 75% of the total decision certificates issued. CRPC used its extensive network of regional offices and mobile teams to perform certificate

delivery. Those certificates not delivered before the end of CRPC's mandate should be available for claimants at the BIH Archives.

### **CRPC reconsidered its decisions**

Although Annex 7 provided for final and binding decisions, given the condition of the property records in BIH, CRPC was aware that the state of property relations on the ground did not match the relevant records in many instances. Taking this into account, as well as the principles of the European Convention on Human Rights, CRPC adopted a reconsideration procedure to give interested parties an opportunity to contest CRPC decisions. The total number of requests for reconsideration received by CRPC was approximately 0.8% of decisions issued, of which 20% resulted in CRPC revoking its initial decision. The Commission therefore only reversed 0.12% of all the decisions issued.

### **Activities related to the implementation of CRPC decisions and land registration reform**

Annex 7 of the Dayton Peace Agreement did not give CRPC the power to implement its decisions; this power rested squarely with the domestic authorities. However, until a law was imposed by the High Representative mandating the implementation of CRPC decisions, the domestic authorities actively failed to implement CRPC decisions and found numerous ways to obstruct the process until 2000. As a member of the Property Law Implementation Plan (PLIP), and working with other international organisations, CRPC achieved wide-spread implementation of its decisions.

CRPC performed property checks for reconstruction agencies and PLIP, provided legal advice and advocacy to its claimants and decision holders. Furthermore, the Commission worked with the municipal housing bodies to monitor enforcement and support the elimination of double occupants, who, after repossessing their pre-war homes, continued occupying other peoples' property without legal basis. This work was furthered by CRPC developing integrated databases that allowed the Commission to cross-reference CRPC data with data from the domestic bodies in BIH.

Though not strictly a part of its mandate, CRPC, in partnership with OHR, advocated for reform of the regulatory framework of land registration that would foster the rule of law in the property sector and encourage investment in the real estate market.

### **Transfer to BIH authorities**

Pursuant to Annex 7 of the Dayton Peace Agreement, CRPC was supposed to be transferred to the Government of BIH at the end of 2003, after which BIH was to assume full responsibility for its operation and financing. CRPC made all efforts to ensure a proper transfer of its functions to the Government of BIH.

However, due to delays and obstruction on the part of certain domestic authorities, the Framework Transfer Agreement, which was created with input from PLIP agencies, had not been signed at the time of the writing of this End of Mandate Report. There has also been a delay in transferring other functions to the domestic authorities (undelivered certificates, which, while transferred, should have been completed sooner to ensure they were catalogued and easily accessible from the CRPC database). However, numerous functions such as CRPC databases, including the cadastre database and the tracking and repossession databases, as

well as undecided claims and thousands of documentary materials have been transferred to the relevant Ministries and bodies.

### **Summary of accomplishments**

Over the course of its eight-year mandate CRPC:

- Collected 240 233 claim applications for 319 220 properties for 360 246 claimants through 23 regional offices in 7 countries.
- Adopted 311 757 final and binding decisions confirming property rights.
- Conducted over 81 000 property right checks for reconstruction agencies and PLIP.
- Collected, verified, and configured land cadastre records of private property evidence from paper documents and outdated ill performing former Yugoslavia databases, for a total of 86 municipalities and transported this data into a user friendly windows database.
- Assisted more than 16 600 CRPC decision holders in implementing their decisions.
- Designed and maintained the Repossessions Tracking Database and the Integrated Property System. CRPC integrated in total 39 major municipal claims databases containing data on 171 600 municipal claims into the Integrated Property System. CRPC processed and entered 186 700 repossession cases into the Repossessions Tracking Database which was then integrated into the Integrated Property System.
- Contributed to drafting the property legislation that established the framework for property repossession in BIH.
- Provided information and training on property laws and implementation of CRPC decisions, resulting in the property law implementation rate increasing from 21% at end of 2000 to 41% at end of 2001 to 69% at end of 2002 to 92% by November 2003 (PLIP statistics).
- Transferred certain functions (databases, archives, and undelivered certificates) to the institutions in BIH.

The accomplishments above in themselves are impressive and taken together they have contributed to assisting numerous families in starting to build their lives again following the conflict in BIH. Hopefully the work of the CRPC will also contribute in the long term to the Office of the High Representative's Mission Implementation Plan whose major objective is to ensure that BIH is a **peaceful, viable state on course to European integration.**

**COMMISSION FOR REAL PROPERTY CLAIMS OF  
DISPLACED PERSONS AND REFUGEES (CRPC)**

**END OF MANDATE REPORT  
(1996 – 2003)**

## **Mandate of CRPC**<sup>1</sup>

The signing of the Dayton Peace Agreement<sup>2</sup> marked the end of a four-year brutal war in Bosnia and Herzegovina (BIH). Ethnic cleansing was a key strategy in the grab for territory, forcibly displacing or killing people of one or more different ethnic groups. Annex 7 of the Dayton Peace Agreement, which is the document's "Agreement on Refugees and Displaced Persons", recognized that the resolution of property issues would be pivotal for the success of a peace building process in a post-conflict situation. It therefore guaranteed that refugees and displaced persons (RDPs) of BIH have the right to return to their homes or to compensation in lieu thereof. The Commission for Real Property Claims of Displaced Persons and Refugees (CRPC or the Commission) was created under Annex 7, Chapter 2 of the Dayton Peace Agreement to ensure that an impartial decision-making body would resolve property issues for an estimated 2.2 million people who lost their homes during the war.

CRPC was an international property commission that comprehensively dealt with property issues resulting from ethnic conflict, a mass RDP crisis, wide-scale destruction of housing, illegal and legal secondary occupation, an under-capacitated and biased court system, and an underdeveloped property registration system.

Article XI of Annex 7 mandated CRPC as follows:

The Commission shall receive and decide any claims for real property in [BIH], where the property has not voluntarily been sold or otherwise transferred since April 1, 1992, and where the claimant does not now enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of return.

Consistent with its mandate CRPC collected a total of 240 233 claims for 319 220 properties for 360 246 claimants affecting approximately one million<sup>3</sup> people by 31 December 2002.<sup>4</sup> CRPC stopped claims collection activities as of 1 January 2003 because evidence showed that the potential claimant base had been saturated and the domestic authorities had been accepting claims without problems. CRPC also needed to concentrate its remaining time and resources on completing decision-making.

The Commission was mandated to accept property claims by claimants not in possession of the property in question, excluding property voluntarily sold or transferred since 1 April 1992. Pursuant to Article XII(3) the Commission had the power to "not recognize as valid any

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<sup>1</sup> Attached to this End of Mandate Report are Annexes A-G.

<sup>2</sup> The internationally-brokered Dayton Peace Agreement was negotiated by representatives of the parties involved in the 1992-1995 war in BIH, including the neighbouring Republic of Croatia and the Federal Republic of Yugoslavia, at US-led talks in Dayton, Ohio, in November 1995. On November 21, the parties successfully concluded the negotiations, and on December 14, they signed the Dayton Peace Agreement in Paris. The Agreement is formally referred to as the General Framework Agreement for Peace in Bosnia and Herzegovina ("GFAP"). Bosnia and Herzegovina has two entities, the Federation of Bosnia and Herzegovina and Republika Srpska (RS), and the District of Brcko.

<sup>3</sup> This number was arrived at by using the assumption that each claim (240 233) had a residential property claimed, which multiplied by the average family household of 3.5 equals just over 850 000.

<sup>4</sup> For exact and complete CRPC statistics, where available, see Annex A "CRPC Statistical Summary (1996-2003)" (CRPC Statistical Summary), which includes a definition of CRPC terms. All figures from the CRPC Statistical Summary are included in this End of Mandate Report as exact figures, all others are rounded off to the nearest hundred, where appropriate. It is important to note that not all CRPC figures are comparable. For example, one claim may result in several decisions. For definitions of CRPC terms, see the Glossary of CRPC Terms, attached to Annex A.

illegal property transaction, including any transfer that was made under duress, in exchange for exit permission or documents, or that was otherwise in connection with ethnic cleansing.”

While Annex 7 gave CRPC the mandate to determine the voluntariness of wartime transfers it was ill-equipped and it would have been too costly and time-consuming to investigate into the voluntariness of a transfer beyond the submitted documentary evidence. CRPC was established as a fast-track mechanism which took a single-party administrative approach to resolving claims. CRPC confirmed property rights as of 1 April 1992 on the basis of available documentary evidence according to its rules and regulations. Resolving a caseload of 319 220 claimed properties through traditional legal adversarial proceedings could have taken more than 100 years at exorbitant cost, considering that almost half of its claimants were outside BIH. Additionally, the international community, especially the Office of the High Representative (OHR)<sup>5</sup>, wanted CRPC to move as quickly as possible to reverse the impact of the war. The quick return of RDPs to their homes of origin was of utmost importance to the peace process.

Many property transfers made during and immediately after the war were disputed as arising out of duress. In many cases, duress was as obvious as a gun in one’s face, while in other cases transfers were not blatantly involuntarily but made under sometimes very unfavourable terms on account of situational duress.

The Commission therefore used its power to disregard domestic legislation in respect to wartime transfers by adopting a presumption that wartime transfers were involuntary and made under duress and therefore not recognised by CRPC.<sup>6</sup>

While Article I(1) of Annex 7 states that compensation is only to be paid for property that cannot be restored, the words “in lieu of” implies that claimants are to be offered a choice between return of property or compensation. Return of property would assist the goal of restoring a multi-ethnic society in BIH by permitting the claimant to return into possession of the claimed property. Compensation would assist the legal obligation to compensate for gross violations of human rights. However, the international community and certain political groups in BIH were of the view that making compensation available would undermine the goal of restoring a multi-ethnic society because it could persuade claimants to seek relocation in an area where they belonged to the majority group or to stay abroad. For more information on compensation see Annex B “Annex 7 Compensation Fund Unrealised”.

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<sup>5</sup> The Office of the High Representative (OHR) is the chief civilian peace implementation agency in BIH. The Dayton Peace Agreement designated the High Representative to oversee the implementation of the civilian aspects of the agreement on behalf of the international community. The High Representative is also tasked with co-ordinating the activities of the civilian organisations and agencies operating in BIH.

<sup>6</sup> Amendments to the property laws imposed by the High Representative determined that courts have specific jurisdiction to deal with such questions under existing law but failed to presume that all wartime transfers were made involuntarily and under duress. Through the *Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees* adopted in both entities (together, the *Law on Implementation of Decisions of the CRPC*), this aspect of CRPC’s mandate was transferred to the domestic courts. *Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees* (Federation of BIH published 43/99, 51/00 and 56/01 and RS 31/99, 2//00, 39/00 and 65/01).



In summary, the core mandate acted upon by CRPC was the restoration of property rights through the collection of claims and issuance of final and binding certificates confirming property rights.

### **The General Purpose of CRPC and its Role in the Dayton Peace Agreement**

The establishment of CRPC was regarded as one of the major prerequisites not only for the facilitation of return of RDPs, but also for the whole process of interethnic reconciliation and stabilization in BIH. The tragic circumstances of the war in BIH resulted in only approximately one third of the total pre-war population of BIH of 4.4 million persons still residing in the same house after the war as in 1991.

Taking into account this massive population displacement, the issue of return of property was seen as central to the realization of the general objective of the Dayton Peace Agreement, namely the establishment of lasting peace and of a democratic civic society in BIH.

One of the principle guarantees of the Dayton Peace Agreement is that “all refugees and displaced persons have the right freely to return to their homes of origin” and that “they have the right...to have restored to them property of which they were deprived in the course of hostilities since 1991”. This was seen as the starting point and central to the Dayton Peace Agreement, for without that guarantee, peace, the rule of law, civil society or future economic development of a democratic civic society could never emerge. The Commission’s purpose can therefore be broadly defined as contributing to the creation of the establishment of peace, the rule of law and civil society.

The requirement of setting up CRPC by the envisaged deadline of 13 March 1996 needs to be seen in the context of ensuring that the property issue would not block the implementation of reconstruction and of return programmes, both of which were key to ensuring peace. The possibility of reconstructing property for a person who was not the rightful owner to property would have been counter to the goals of the Dayton Peace Agreement. The World Bank Group (the World Bank), the European Commission (EC) and donor governments involved in funding reconstruction needed an impartial decision-making body to ensure that this did not happen.

Therefore, in order to have a comprehensive understanding of the purpose of CRPC, it must be seen in the whole context of the Dayton Peace Agreement.<sup>7</sup>

### **Historical Overview: 1996-2003**

This section will provide a brief account of the evolution of CRPC in its unprecedented task over a period of eight years. There are two periods of the Commission’s operation: 1996-2000 (its initial five-year mandate) and 2001-2003 (its renewed three-year extension).

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<sup>7</sup> It is particularly linked to Annex 4 (Constitution of BIH) and Annex 6 (Agreement on Human Rights) of the Dayton Peace Agreement. With respect to the former, it has already been mentioned that RDPs have the constitutionally enshrined right to return to their homes of origin, as well as the right to either be restored their property or to be compensated if property cannot be returned. The right to property and the right to a fair hearing in civil matters are human rights, according to Article 1(5) and (11) of Annex 6 of the Dayton Peace Agreement.

From 1996 to 2000, the Commission focused on collection of evidence, accepting claims, issuing decisions and implementation of CRPC decisions. Furthermore it contributed to domestic property law reform. In the course of its renewed three-year mandate from 2001 to 2003, it streamlined its procedures and collected additional evidence to increase the rate of decision-making, revised its rules and regulations in light of evidentiary and legal developments, restructured the organization, reorganized its certificate delivery system and further pursued the implementation of its decisions. During the final years of its operation, the Commission also planned for and implemented the transfer of its functions to the Government of BIH.

### **1996-2000: Initial Five-Year Mandate**

CRPC officially began with the appointment of the nine Commissioners. The President of the European Court of Human Rights appointed the three International Commissioners, from whom he designated the Chairperson, and the Governments of the Federation of BIH and the Republika Srpska appointed six National Commissioners from the three major peoples in BIH (two Bosniacs and two Croats appointed by the Federation of BIH and two Serbs appointed by the Republika Srpska). The High Representative at that time, Carl Bildt, introduced the Commissioners and officially launched the Commission in March 1996.

The Commission's first objective was to raise funds, since the Commission neither had a headquarters nor funding to begin work. The Commission received early logistical support from the International Organization for Migration (IOM). The Commission concluded a Headquarters Agreement on 8 September 1996 with BIH, which gave it international status and diplomatic immunities and supported the independence of CRPC.

In 1996, equipped with only the nucleus of ten staff and the text of Annex 7, the substantive challenges facing the Commission were great. There were over two million RDPs, many without documents proving their property rights. Official property books were in disarray, destroyed, altered or had vanished, and many property books were relocated within or between the hostile entities during the war. In some cases these property records were outside of BIH. There was widespread political obstruction to accessing property records, and war-time discriminatory laws relating to abandoned property were still in effect.

Before the Commission could begin to take claims from potential claimants, it carried out necessary preparatory work such as obtaining information on the relevant legislation of 1992, as well as relevant additional instruments adopted thereafter, including domestic law; the property registration system and its present availability; the number and types of potential claims and the regional distribution of these claims.

With all these challenges as a backdrop, CRPC set out to define its operational framework. It was difficult for the Commission to determine what rights existed and what evidence was available because initially the information it received was contradictory or incomplete. In developing its Books of Regulations, the Commission resolved who would have the right to claim, the claim elements and procedure, evidence admissibility, and the claim determination procedure.<sup>8</sup> It also decided that it would not charge claimants nor require them to submit

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<sup>8</sup> CRPC adopted both a Book of Regulations on the Conditions and Decision Making Procedure for Claims for Return of Real Property of Displaced Persons and Refugees, Sarajevo, Final Consolidated Version dated 29 November 2003, incorporating all amendments (Book of Regulations on Private Property) and a Book of

evidence in order to file a claim. Only after researching and taking positions on these issues could the Commission establish its claim application form.

In parallel with the development of its procedures, the Commission established field offices in the biggest urban areas representing the three major peoples in BIH. In its first ten months of operation, CRPC established four regional offices and registered approximately 3 000 claim applications. This period was marked with high security risks for the premises as well as for the domestic staff travelling through potentially hostile areas of the country. Nevertheless, no serious incidents were reported.

Discriminatory domestic legislation and administrative decisions were in effect during this period, making the implementation of CRPC decisions problematic or impossible unless the domestic legislation was repealed. In 1996, discriminatory war-time laws on abandoned property were repealed and subsequently additional changes to legislation were made. Throughout its mandate, CRPC worked actively with OHR and other international organizations to institute reforms of property legislation, including assisting in the drafting of such legislation.<sup>9</sup>

In order to maximize the effects of the changes in property legislation, CRPC began an extensive information campaign in 1997 to inform potential claimants of their rights and of the procedures to file claims. The following two years were marked with CRPC having to refine systems to address the rising number of claimants. At one point during this period, appointments for filing claims were scheduled almost a year in advance.

To handle the caseload of claim collection during these years, new staff were quickly recruited and trained, and additional computer equipment was rushed in to meet the overwhelming demand. As increased funding became available, the Commission established additional regional offices in BIH. Several donors also provided support by establishing offices abroad in countries hosting large numbers of BIH refugees. By the end of 1999, CRPC had opened 23 regional offices in seven countries.

Within the first 18 months of its operation, CRPC collected approximately 40 000 claims. During the peak period of claims collection, 1998-1999, the Commission collected on average approximately 5 500 claim applications per month, pertaining to over 7 000 properties. The overwhelming demand, increased workload, number of new offices and staff required a well-coordinated operation. In a war-torn country, sometimes lacking even the basic infrastructure such as working telephone lines, this was a daunting task.

CRPC was the only available mechanism for RDPs to obtain confirmation of property rights until the High Representative completely repealed discriminatory wartime legislation and imposed new property repossession legislation. During this period, the courts and administrative bodies were widely criticized for lacking capacity and impartiality in terms of collecting and determining property rights. CRPC was successful in filling this gap.

For there to be quick and cost-effective decision-making, CRPC was extensively involved in locating and collecting missing property/cadastre records, verifying them for accuracy and

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Regulations on the Confirmation of Occupancy Rights of Displaced Persons and Refugees, Sarajevo, Final Consolidated Version dated 29 November 2003 (Book of Regulations on Occupancy Rights).

<sup>9</sup> For an outline of property law reform in BIH see Annex C “Chronology of Amendments to Laws on Repossession of Pre-war Property in the Federation of BIH and Republika Srpska”.

using a variety of information technology mechanisms to transfer the numerous cadastre records into a single computerized format accessible from the Commission's Verification and Cadastre Unit. However, as property was a key element of the conflict, access to property records and verification systems were met with frequent obstacles.<sup>10</sup>

In 1997, CRPC issued its first decision; but only managed to issue 706 decisions in total that year because of the difficulties in obtaining the evidence required to confirm ownership. In order to facilitate the quick return of RDPs to their property, CRPC therefore decided to issue decisions confirming lawful possession. Lawful possession is a lesser right than ownership, but confirming it as a right enabled RDPs to repossess their homes in line with the aims of Annex 7.<sup>11</sup> Obtaining evidence on lawful possession (contained in cadastre records) was difficult but possible. Had CRPC strived to prove ownership in all claims, much more time would have been needed and fewer decisions could have ultimately been issued by the Commission, both of which would have impeded the return process.

The need to register and render decisions in large numbers required the development of complex technical systems. Sophisticated software was developed to enable the collection and storage of claims throughout BIH and other refugee hosting countries. CRPC was in a position to fully implement its mandate under Annex 7 only after the collection of evidence on real property from domestic authorities, the development of an extensive evidence database from which decisions could be rendered, plus the training of a staff of over 100 domestic lawyers and technical personnel of mixed ethnicity.

Annex 7 did not provide enforcement power to CRPC and, by early 1998, when the Commission had issued close to 3 000 decisions (relating to over 10 000 individuals), it had become evident that a CRPC decision alone did not guarantee repossession of one's property. Due to this lack of enforcement abilities in the mandate, the initial disillusionment of the general public with the value of CRPC decisions was evident as the domestic authorities failed to implement them.

While the responsibility for implementing CRPC decisions rested with the domestic authorities, and despite the consistent pressure of the international community, domestic authorities were initially reluctant or blatantly refused to enforce CRPC decisions. Therefore, even though the implementation of its decisions was not part of its mandate, CRPC was compelled to become actively involved in ensuring the implementation of its decisions. In 1998, CRPC began actively lobbying the High Representative for the need to have domestic legislation on enforcement in order to achieve the implementation of CRPC decisions.

In 1998 and 1999, the High Representative used his new Bonn powers to impose a property repossession legal framework. This included the *Law on Implementation of CRPC Decisions*<sup>12</sup> which was imposed in both entities in October 1999, and which provided the catalyst for widespread implementation of CRPC decisions. Moreover, the municipalities actually began to collect claims themselves after the legislative reforms of 1999.

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<sup>10</sup> For more detail on cadastre database development and obstacles to evidence collection, see Annex D "Evidence Collection and Types of Rights Confirmed by CRPC Decisions".

<sup>11</sup> Lawful possession is discussed in greater detail below as well as in Annex D "Evidence Collection and Types of Property Rights Confirmed by CRPC Decisions".

<sup>12</sup> Law on Implementation of the Decisions of the Commission of the Commission for Real Property Claims of Displaced Persons and Refugees (published in the Official Gazette of Federation of BIH, Nos. 43/99, 51/00, 56/01 and 24/03 and in the Official Gazette of the Republika Srpska, Nos. 31/99, 39/00, 65/01 and 39/03).

The breakthrough in implementation which started with the *Law on Implementation of CRPC Decisions* was further bolstered with CRPC joining OHR, the Organisation for Security and Co-operation in Europe (OSCE), the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Mission in BiH (UNMIBH) in becoming a founding member of the Property Law Implementation Plan (PLIP) in 1999. Together with these international organizations, CRPC was able to successfully improve the rate of implementation of its decisions.

In summary, by the end of 1998, decisions were being issued at the rate of 3 000 to 4 000 per plenary session after discriminatory wartime legislation had been repealed and sources of evidence were identified and accessed. By the end of 1999, CRPC had collected almost 200 000 claims from almost 300 000 claimants and issued more than 70 000 decisions.

### **Extension of Mandate – 2001-2003**

Although the restoration of property rights was regarded as a precursor to the long-term stability of BiH and a pre-condition to the re-establishment of multi-ethnic communities, it had initially proven to be one of the most difficult challenges of the Dayton Peace Agreement. Much remained to be done to achieve this goal at the time when CRPC's initial five-year mandate was coming to an end. In recognition of this fact, the Peace Implementation Council (PIC)<sup>13</sup> in its Brussels session on 23/24 May 2000, reaffirmed its support for the Commission and called on the authorities in BiH to provide increased support for CRPC and to implement in full its decisions. It also provided its support for the continued operation of CRPC, following the expiry of the mandate in December 2000, and the continuation of the Commission's mandate until the end of 2003. This extended mandate was signed by the Parties of Annex 7.<sup>14</sup>

While CRPC decisions had not been initially implemented in large numbers during the early years of the Commission, their importance was confirmed by the BiH Constitutional Court and the Human Rights Chamber. In addition, other domestic courts and administrative bodies came to respect and implement them widely by 2001. By the end of 2002, when CRPC stopped taking claims, CRPC had collected 240 233 claims for 319 220 properties and issued 245 386 decisions. By December 2003, CRPC had issued 311 757 decisions confirming property rights and approximately 80% of CRPC decisions on residential property had been implemented.

During this period, in order to increase the rate of decision-making, the Commission revised its Books of Regulations in light of evidentiary developments. In addition, the organization was restructured and streamlined, with the closure of the majority of regional offices beginning in 2002. This period also saw a greater focus on certificate delivery to claimants via CRPC's regional offices or mobile teams.

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<sup>13</sup> Following the successful negotiation of the Dayton Peace Agreement in November 1995, a Peace Implementation Conference was held in London on December 8-9, 1995, to mobilise international support for the Agreement. The meeting resulted in the establishment of the Peace Implementation Council (PIC). The PIC comprises 55 countries and agencies that support the peace process in many different ways - by assisting it financially, providing troops for SFOR, or directly running operations in BiH. There are also a fluctuating number of observers.

<sup>14</sup> On 29 March 2001, the BiH Council of Ministers decided to extend the Headquarters Agreement between CRPC and BiH.

In light of Annex 7 providing for the transfer of CRPC to the domestic authorities after its initial (and then continued) mandate, the Commission began discussing and exploring possible transfer models as early as 1999. Realizing the complexity of any transfer, in September 2002, CRPC prepared and distributed a paper entitled “Transfer of CRPC – Discussion Paper” to various international organizations, including OHR, and to all of its donors. This paper initiated substantive discussions early on in order to ensure that a proper transfer would take place at the end of 2003. In that paper CRPC made it clear that a legal framework, including an agreement signed by the Parties to Annex 7 and implementing legislation, would be required to ensure a proper transfer of CRPC’s core activities to BIH after the expiry of CRPC’s extended mandate.

## **Inputs of CRPC**

### **Organizational Structure of CRPC**

The Commission was composed of nine Commissioners, three International Commissioners who were appointed by the President of the European Court of Human Rights, and six National Commissioners, two appointed by Republika Srpska and four appointed by the Federation of BIH. This resulted in an ethnically-balanced membership (two Bosniacs, two Croats, and two Serbs). The CRPC Commissioners were:

Jean-Pierre Hocke	International Commissioner
Professor Maria-Rita Saulle	International Commissioner
Professor Hans Van Houtte	International Commissioner
Miroslav Gladanac	Commissioner for Republika Srpska
Jovo Miskin	Commissioner for Republika Srpska
Davor Cordas	Commissioner for Federation of BIH
Damir Ljubic	Commissioner for Federation of BIH
Jasmin Jajafendic <sup>15</sup>	Commissioner for Federation of BIH
Mirsad Milavic	Commissioner for Federation of BIH

The Chairman of CRPC was an International Commissioner that was appointed by the President of the European Court of Human Rights.<sup>16</sup>

The Commissioners attended *inter alia* about eight to eleven plenary sessions per year in Sarajevo as well as lending their expertise through specific visits, individual meetings, telephone conversations and correspondence. They adopted decisions by majority but policy-making was consensual. In addition, the National Commissioners met in Sarajevo in between plenary sessions to review draft decision proposals, discuss particular claims if necessary and exchange views on other matters of importance. During each plenary session, the rotating Chairman of the National Commissioners presented a report to the Commission describing their activities.

Initially only a handful of staff were in the Executive Office, but it grew to have a staff of 400 at its peak in November 1999. During its operation the number of staff employed at CRPC

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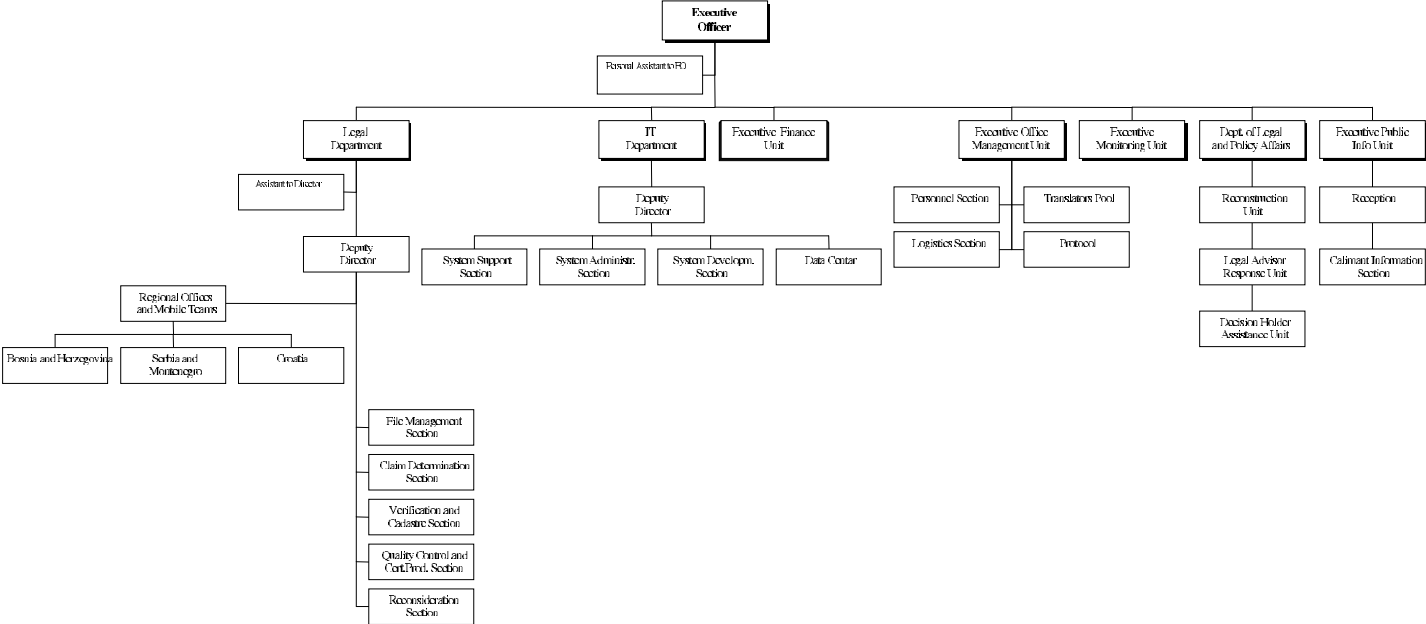
<sup>15</sup> Jasmin Jajafendic was forced to resign from the Commission in 2001 as a result of his appointment as the President of the Sarajevo Court.

<sup>16</sup> Professor Maria-Rita Saulle was the Chairperson for the first six months of the Commission, then Jean-Pierre Hocke and Professor Hans Van Houtte (in that order) were Chairmen for 3 months each, after which Jean-Pierre Hocke was the Chairman until the end of 2003. The National Commissioners had a rotating Chairman on a six-month basis.

varied, which can be seen in the chart below, depending on project requirements and available funding. As also shown in the organizational chart below, the Executive Office was divided into seven departments reporting to the Executive Officer who was responsible for running the day-to-day operation of CRPC.<sup>17</sup>

CRPC maximized usage of national experts who brought invaluable knowledge of the national languages, structures, legal systems and laws. Indeed, during its whole operation, CRPC only ever had a maximum of six international staff members working at any moment. By employing predominantly national staff, CRPC contributed significantly to the development of national management skills throughout the region and kept operational expenses under control.

Chart: Organisational Chart of CRPC Executive Office



<sup>17</sup> The CRPC operation was structured differently during certain periods, having fewer departments; however the seven units or departments in the organizational chart represent the main structure.

Chart: Number of staff

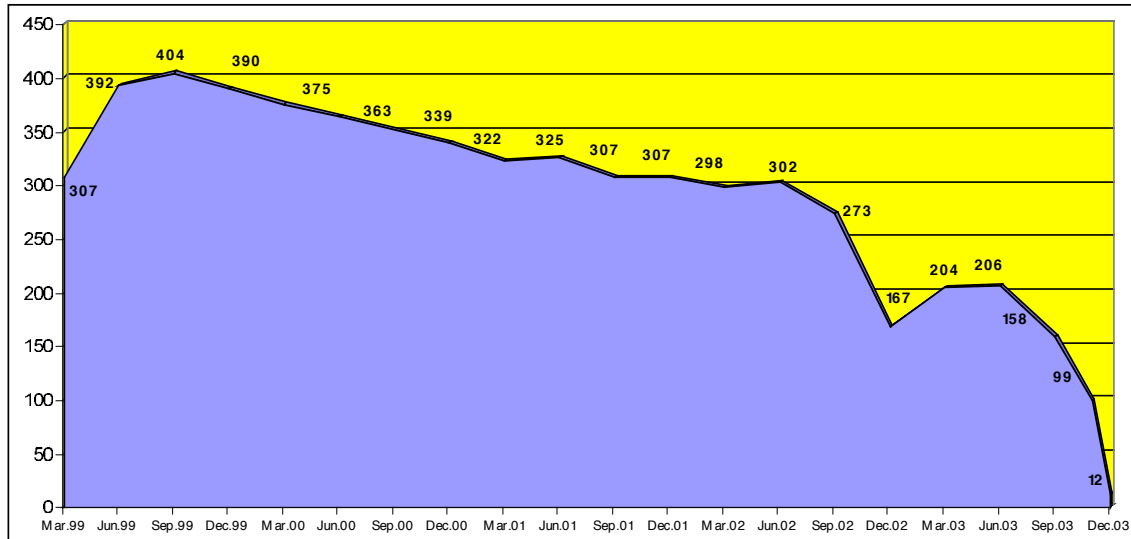


Chart: Senior Level Staff of CRPC

Name	Title	Period of Employment
Steven Segal	Executive Officer	1 Sept. 1996 to 31 Dec. 2003
Rodney Inder	Executive Officer	Mar. 1996 to Aug. 1996
Mark Gruner	Executive Finance Advisor	3 Aug. 1998 to 31 Dec. 2003
Michael Burchart	Director of Administration and Finance	15 Nov. 1997 to 30 Apr. 1998
Vandana Patel	Director of Department of Legal and Policy Affairs, Executive Legal Advisor	22 Jan. 2001 to 31 Dec. 2003
Carla Ferstman	Executive Legal Advisor	1 Mar. 1999 to 28 Feb. 2001
Madeline Garlick	Executive Legal Advisor	8 Sept. 1997 to 10 Sept. 1999
Vojislav Puskarevic	Senior Legal Advisor, Legal Advisor	15 Feb. 1999 to 13 Sept. 2002
Alica Celikovic	Special Projects Development Officer, Executive Project Analyst	May 1998 to Dec. 2002
Sherry Holbrook	Director of Legal Department	3 Mar. 2003 to 31 Dec. 2003
Caroline Rowlands	Director of Legal Department, Monitoring Coordinator	4 Sept. 2000 to 7 Mar. 2003
Anke Strauss	Director of Legal Department	26 July 1999 to 30 June 2001
Hans Das	Director of Legal Department	10 Aug. 1997 to 31 Dec. 1999
Marcus Cox	Senior Legal Advisor	8 July 1996 to 19 Sept. 1997
Nermin Semsic	Deputy Director of Legal Department, Legal Advisor	16 Feb. 1998 to 31 Dec. 2003
Mihridzana Muratbegovic	Deputy Director of Legal Department, Legal Advisor	4 Apr. 1997 to 21 Dec. 1999
Ane Jaksic	Deputy Director of Legal Department, Senior Verification Officer	30 June 1997 to 19 Feb. 1999
Sead Cukovic	Director of IT Dept Deputy Director of IT Dept	1 Oct. 1997 to 31 Dec. 2003



Igor Akulovic	Deputy Director of IT Dept	5 May 1997 to 31 Dec. 2003
Todd Penland	Director of IT Dept	1 June 1997 to 30 Sept. 2001
Jim Miller	Director of IT Dept	30 Sept. 1996 to 30 June 1997; 14 Sep. 2001 to 15 Dec. 2002
Samir Nalo	Monitoring Coordinator, Monitoring Manager	22 Jan. 2001 to 12 Dec. 2003
Marie-Pierre Lanore	Monitoring Coordinator	6 Aug. 2001 to 15 Dec. 2002
Marina Vasilj	Executive Office Manager	1 July 1998 to 31 Dec. 2003
Vanesa Zecevic	Executive Public Info Advisor, Spokesperson, Director of Public Relations Dept	6 July 1998 to 31 Dec. 2003
Stefan Obrenovic	Director of Operations Dept <sup>18</sup>	5 Nov. 1996 to 30 June 1999
Johan Verheyden	Director of Operations Dept	19 Apr. 1999 to 8 Dec. 1999
Fred Frenschek	Chief of Staff	28 Jan. 1998 to 4 Dec. 1998

CRPC's Executive Office headquarters, consisting of two separate locations, was in Sarajevo, supported by 23 regional offices, as shown in the chart below, at the peak of claims collection activities in 1999. Other field activities of CRPC included mobile teams servicing rural areas, verification teams collecting and verifying evidence, and legal advisors and monitoring officers monitoring and intervening with the domestic housing authorities.

Chart: CRPC Regional Offices:

<b>Regional Office</b>	<b>Opening Date</b>	<b>Closing Date</b>
<b>BIH</b>		
Banja Luka	February 1998	15 November 2002
Bihac	May 1999	1 November 2002
Brcko	May 1997	13 December 2002
Central Regional Office	December 1999	31 December 2003
Lukavica	November 1996	31 May 2000
Mostar	November 1996	22 November 2002
Sarajevo	October 1996	15 December 2002
Tuzla	March 1998	13 December 2002
Vitez	June 1999	1 September 2000
<b>Croatia</b>		
Slavonski Brod	May 1999	31 August 2002
Zagreb	May 1999	8 August 2003
<b>Denmark</b>		
Copenhagen	September 1998	15 March 2000 Certificate delivery until 15 May 2000
<b>Germany</b>		
Berlin	October 1997	15 November 1999 Certificate delivery until 15 November 2000
Duisburg	December 1998	1 December 1999
Freiburg	February 1999	1 December 1999
<b>Netherlands</b>		
Utrecht	January 1999	31 March 2000 Certificate delivery until 30 June 2000
<b>Norway</b>		
Oslo	May 1998	31 December 1999

<sup>18</sup> The Operations Department was closed in 1999 and its functions were assumed by other departments in CRPC, primarily the Legal Department.

		Certificate delivery until 31 March 2000
<b>Serbia and Montenegro</b>		
Beograd	September 1998	31 December 2003
Herceg-Novi	July 1997	31 May 2000 Registrar until 3 October 2003
Novi Sad	August 1998	31 March 2003
Podgorica	July 1997	31 May 2000 Registrar until 31 March 2003
Pozega	August 1998	31 December 2001
Malmoe	September 1998	1 July 1999

## Financing of CRPC

Although the Parties to Annex 7 (Republic of BIH, Federation of BIH and Republika Srpska) were formally responsible for the financing of CRPC, in practice CRPC received only nominal funding from the Government of BIH, as shown in the table below. The Federation of BIH and Republika Srpska made no financial contributions to CRPC. Despite its status as a Dayton Peace Agreement institution, CRPC had to struggle year to year to obtain voluntary contributions from international donors. The PIC agreed to a formula of how much each government should contribute yearly to each Dayton institution but as illustrated in the chart below the funding key was never actually met by the various governments. As shown in the chart, over a six-year period (1998-2003) CRPC only received approximately 80% of the funds deemed necessary for its operation by PIC.

Chart: PIC Funding Key (US Dollars)

	1998	1999	2000	2001	2002	2003
Appeal Budget <sup>19</sup>	7 197 222	7 500 000	7 500 000	6 400 000	5 200 000	4 000 000
Amount received	4 908 000	6 551 000	5 957 000	5 109 000	4 199 000	3 441 500

<sup>19</sup> The Appeal Budget represents the amount that PIC recognized for CRPC's needs and requested governments to fund on CRPC's behalf. The first assessed contributions occurred on 28 January 1998 for the funding year 1998. This was for the Annex 6 and Annex 7 institutions. This funding key was prepared every year until 2003.

Chart: History of Funding of CRPC (US Dollars) Sorted by Largest Donor<sup>20</sup>

Donor	2003	2002	2001	2000	1999	1998	1997	Total
European Community	1 650 000	1 484 000	1 874 000	2 862 000	3 242 000	1 103 000	434 000	12 649 000
The United States of America	650 000	647 000	775 000	1 503 000	1 654 000	1 583 000	1 364 000	8 176 000
UNHCR	100 000	150 000	200 000	529 000	560 000	449 000	128 000	2 116 000
The Kingdom of the Netherlands	412 000	382 000	383 000	264 000		167 000	250 000	1 831 000
Sweden	112 000	490 000	273 000	-	380 000	118 000	200 000	1 538 000
Canada	160 000	156 000	394 000	203 000	231 000	214 000	198 000	1 484 000
Italy	0	325 000	491 000	-		330 000	294 000	1 440 000
Ireland	137 500	178 000	241 000	210 000	201 000	283 000	72 000	1 322 500
BIH	55 000	296 000	256 000 <sup>21</sup>	149 000	82 000	120 000	0	958 000
Switzerland	55 000	62 000	125 000	122 000	-	87 000	74 000	525 000
Norway	110 000	28 000	73 000		-	253 000	50 000	514 000
World Bank				81 000	170 000	0		251 000
Germany							178 000	178 000
Great Britain						164 000	0	164 000
Belgium						0	137 000	137 000
Luxembourg						30 000	0	30 000
Interest	0	1 000	24 000	34 000	31 000	7 000	1 000	98 000
Special Projects income					0	0	19 000	19 000
Total incoming resources	3 441 500	4 199 000	5 109 000	5 957 000	6 551 000	4 908 000	3 399 000	33 492 500

## **CRPC Activities**

### **CRPC collected claims for more than three hundred thousand properties in seven years**

CRPC was tasked with the responsibility of collecting potential claims from over 2.2 million RDPs. Consistent with its mandate CRPC collected a total of 240 233 claims for 319 220 properties for 360 246 claimants representing an estimated total beneficiary population of approximately 840 800 by 31 December 2002.

In 1991, the population of BIH was estimated at 4.3 million, in slightly less than 1.3 million households, at an average household size of 3.4 persons. As a result of the tragic conflict in BIH approximately 2.2 million people, or more than 50% of the population, left their pre-war homes in BIH. Reaching the 1.2 million refugees of BIH dispersed throughout the world and one million internally displaced persons within BIH was a challenge that CRPC successfully

<sup>20</sup> In 1998, Germany and Switzerland seconded persons for the positions of Chief of Staff and Director of Operations Department.

<sup>21</sup> 240 000 Euros remain unpaid from the Government of BIH for the year 2001.

satisfied. While in practice the return of these people would hinge on several factors, in terms of housing this meant focusing on two areas of concern: repossession and reconstruction.

During a peak period from 1998 to 1999, the Commission collected on average approximately 5 500 claim applications per month, pertaining to over 7 000 properties, and had established, as shown in the chart above, a network of 23 regional offices in BIH (nine), Croatia (two), Serbia and Montenegro (five) and Western European countries (seven). Mobile teams serving rural areas in order to reach vulnerable groups were also utilised in BIH, Croatia and Serbia and Montenegro.

As claims collection peaked from mid-1998 to 1999, CRPC responded to an urgent need to address the large number of questions from CRPC claimants, Non-governmental Organizations (NGOs) and RDP associations by establishing in 1999 a Claimant Query Response Team (CQRT). CQRT provided information to potential claimants on claim procedures in accordance with CRPC rules and procedures and domestic laws and information on claim status to thousands of RDPs who had already claimed with CRPC during the period 1996-1998 when CRPC was the sole body receiving property claims. The team consisted of four Public Information Officers who provided services by phone and in person. At that time, CRPC was literally crowded with hundreds of people queuing for hours in corridors to get accurate and timely information on claiming procedures in order to protect their property rights. The need for establishing the team was compelling due to the complexity of property laws and claimants' frustrations in understanding them.

During this stage, CRPC actively participated in joint efforts by the international community to reach all categories of the population affected by laws from the war regime that now had been put out of effect and inform them of new laws. The campaign had to be targeted to refugees abroad and displaced persons throughout BIH. Those efforts resulted in information campaigns consisting of information sheets with detailed information on claim procedures and laws, posters, brochures, radio jingles and TV spots.

Throughout its mandate, CRPC's Executive Public Information Unit conducted various information campaigns such as open-air radio and TV shows (150 per year), newspapers interviews (320 per year), and articles (330 per year).

In spite of the efforts by the international community in launching information campaigns throughout BIH and abroad, potential claimants still required detailed information on claiming procedures according to the domestic property laws<sup>22</sup> and CRPC rules and procedures. Therefore, four outreach information officers conducted grassroots and micro-information campaigns in person and by phone.

Information officers were thoroughly trained on the property laws and procedures and provided accurate and timely information to potential claimants. In 1999, over 23 000 claimants were assisted by the CQRT. In 2000, the CQRT expanded its work to written responses and addressed hundreds of letters from all over the world as well as provided

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<sup>22</sup> *Law on the Cessation of the Application of the Law on Abandoned Apartments* (Official Gazette of the Federation of BIH, Nos. 11/98, 38/98, 12/99, 18/99, 27/99, 43/99, 56/01, 24/03 and 29/03) (*Law on Apartments*); *Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens* (Official Gazette of the Federation of BIH 11/98, 29/98, 27/99, 43/99, 37/01, 56/01 and 24/03) (*Law on Private Property*); *Law on the Cessation of Application of the Law on the Use of Abandoned Property* (Published in the Official Gazette of RS, no. 38/98, 12/99, 31/99, 65/01, 39/03 and 96/03) (*Law on Property*).

services to over 22 000 claimants by phone and in person. In 2001, the number of claimants assisted increased to 25 800, and in 2002 the number decreased to 10 500. As a result of lack of funds, the CQRT's capacity began decreasing in 2002 and by 2003 it was reduced to one information officer. CRPC provided claimant assistance until November 2003. During the period 1999-2003, the CQRT assisted 83 400 potential claimants.

In response to a downward trend in claims collection and claims saturation in certain areas, in 2000 CRPC began closing its offices, first in Western Europe, and by January 2003 it only had in total three regional offices, one in BiH, one in Serbia and Montenegro and one in Croatia.

For more detailed information on claims collection see Annex E "CRPC: A Mass Claims Body".

### **CRPC extensively collected and verified evidence**

After the war many claimants found themselves isolated, without a home and possessions, not to mention official documents proving their rights to their property. Cadastre and property book records had been destroyed, moved or altered and were mostly inaccessible to claimants who still faced danger in moving around the country. Consequently, CRPC's rules allowed for claims to be submitted even if claimants had no evidence proving their rights to their pre-war property. Where claimants did not submit any evidence, obtaining this evidence became essential to CRPC's ability to issue final and binding decisions.

For quick and cost effective decision-making, evidence needed to be identified and located, collected, verified and made accessible from a single location. But since property was one of the key elements of the conflict, access to property records and verification mechanisms was met with numerous obstacles. Even if evidence had not been destroyed, moved or altered, in some places domestic elements blocked access to the evidence. In addition, due to historical reasons, existing property records were found to be incomplete.<sup>23</sup>

To maximise efficiency in evidence collection, CRPC collected data for and then increasingly used its in-house-developed cadastre land survey databases, rather than undertaking field investigations by its expert teams. Owing to the Cadastre Database CRPC had created, by 2002 CRPC's Legal Department could undertake in-house verification for the majority of claims relating to properties in 86 of the 109 pre-war municipalities.

For claims on properties in municipalities where in-house cadastre information was still not available, CRPC's Verification and Cadastre Unit collected and verified documents from the courts and municipal cadastre offices throughout BiH until the end of September 2003, when the Commission substantially completed gathering evidence from all municipalities.

During its mandate, CRPC's Verification and Cadastre Unit obtained and verified over 213 000 pieces of evidence in total.<sup>24</sup>

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<sup>23</sup> For example, until 2000 the Republika Srpska authorities in Banja Luka refused to provide access to evidence to CRPC, despite explicit and precise provisions requiring access to evidence in Annex 7. It was only after the High Representative was called on by CRPC to intervene that the situation changed.

<sup>24</sup> It is important to note that a certain number of claims had sufficient evidence attached for decision-making.

For more detailed information on evidence and CRPC’s verification procedures see Annex D “Evidence Collection and Types of Property Rights Confirmed by CRPC Decisions”.

**CRPC issued over three hundred thousand final and binding decisions confirming property rights**

CRPC started issuing its first decisions in October 1997 and by December 2003 it had issued 311 757 decisions in total. Armed with a final and binding CRPC decision that confirmed their property rights as of 1 April 1992, claimants could legally pursue the following options: return to their pre-war homes; sell or exchange their property; rent their property; or preserve their rights to be exercised at a later date. Regardless of the option chosen, in most cases claimants could find a solution.

As illustrated in the chart below, the types of rights confirmed in decisions issued by CRPC included lawful possession, occupancy right and ownership.<sup>25</sup> In addition, CRPC issued 405 decisions confirming the right of possession to a socially-owned apartment<sup>26</sup> and rejected as inadmissible 482 claims.

Chart: Decisions Confirming Property Rights by Type of Right and Year Adopted

Type of Right	1997	1998	1999	2000	2001	2002	2003	Grand Total
Ownership	43	1047	956	2419	4463	3973	4386	17287
Co-Ownership					8	20	18	46
Joint-Ownership	216	4878	6526	8836	9763	8737	10645	49601
Lawful Possession	415	15085	23055	29856	25872	22886	37579	154748
Lawful Co-Possession	24	2656	4002	6094	5433	4209	7089	29507
Mixed Rights		3418	8436	12233	9624	7544	1432	42687
Occupancy Right	8	998	956	3123	3700	3819	4872	17476
Possession of Apartment						109	296	405
<b>Grand Total</b>	<b>706</b>	<b>28082</b>	<b>43931</b>	<b>62561</b>	<b>58863</b>	<b>51297</b>	<b>66317</b>	<b>311757</b>

For more detailed information on the types of decisions issued by CRPC see Annex D “Evidence Collection and Types of Property Rights Confirmed by CRPC Decisions”.

***Confirmation of lawful possession***

The majority of CRPC decisions on private property rights confirmed lawful possession, not ownership, because of complications in the property registration system in BIH.

During CRPC’s operation, BIH operated under a dual property registration system. Ownership rights are registered in Property Books located in the courts. Ownership registration in the courts was and still is complicated. Before the war, taxes due on court registration were high and as a result, many properties were never registered in the Property

<sup>25</sup> See below for a discussion of the different types of property rights in BIH that CRPC confirmed.

<sup>26</sup> See below for a discussion on occupancy rights in relation to socially-owned apartments. CRPC confirmed in accordance with a ruling of the BIH Constitutional Court the right of possession to a socially-owned apartment in certain cases where the conditions for acquiring an occupancy right had not been met.

Books located in the courts. At times, this was a deliberate choice of the property holders and in some cases they were not aware of how the system worked. Furthermore, due to the destruction of property records during World War II and the recent conflict, it was estimated that about only one-third of these Property Book records registering ownership rights remained intact. Private property in BIH was mainly, however, properly registered in the municipal cadastres, which substantiated possession rights.

Most of the private property claims received from RDPs at CRPC requested confirmation of ownership rights. Claimants requested ownership confirmation because it is the strongest of all private property rights, and in fact most claimants believed they legally had ownership rights whether they registered at the courts or the cadastre municipal offices. Because of the reasons outlined above, CRPC could only confirm ownership for approximately 21% of the private properties claimed. When ownership rights could not be confirmed, which was in most cases, CRPC confirmed the right of lawful possession, which was sufficient to enable a claimant to repossess his/her property.

Therefore, many claimants did not possess as strong a property right as they thought they had, and CRPC, with its mandate to confirm rights as of 1 April 1992, the ‘official’ start of the conflict, could, if the claimant did not submit proper evidence on ownership, only confirm rights based on what was reflected in the cadastre records (which indicate lawful possession). The cadastre records were therefore the registration system that had to be used in the majority of cases by CRPC because it was more intact and was the system the majority of the population used and updated most regularly.

Because of the above, CRPC also encountered difficulties defining and counting properties and property units and this resulted in the issuance of partial decisions. This was a CRPC-specific problem but emerged due to the property registration system in BIH.<sup>27</sup>

Though not strictly a part of its mandate, CRPC, in partnership with OHR, advocated for reform of the regulatory framework for a modern land registration system that would foster the rule of law in the property sector and foster investment in the real estate market.

In order to facilitate improving the state of affairs regarding the registration system, CRPC also conducted a study, financed by the World Bank, which made recommendations for improvement of the registration system because it is a central issue for the entire country and the basis of future investment and a viable real estate market.<sup>28</sup>

The *Law on Property Books* recognises CRPC decisions as having the force of legal evidence that may be used in administrative, judicial or other legal proceedings, most importantly proceedings to register ownership. This Law provides that the Land Registry Office within the

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<sup>27</sup> This is an important issue in order to understand CRPC statistics. Because of the complications in the registration system, CRPC had difficulties defining and counting properties. Many properties had several units, e.g., a house, land, a garage and a barn. One part of a property may have been registered with an ownership right and one with a possession right, and one maybe was not registered at all. This resulted in the issuance of partial decisions. While this was a problem especially encountered by CRPC, which issued decisions with property details, the issue of different governmental and international organizations supplying coherent statistics on complex concepts such as “claims” and “properties” is a challenging one. For additional information, see the Glossary of CRPC Terms, attached to Annex A “CRPC Statistical Summary”.

<sup>28</sup> *Real Property Title and Entitlements in Bosnia and Herzegovina: Creating a Unified System for the Registration of Real Property Rights and the Development of the Real Property Market.*

courts will accept CRPC decisions as legal evidence in ownership proceedings.<sup>29</sup> Property book courts now accept CRPC decisions as legal evidence in ownership proceedings. This is an important contribution to facilitating proper ownership registration.

### ***Confirmation of occupancy rights (stanarski pravo)***

Before the war, a majority of apartments were socially-owned while a majority of the single family dwellings and some apartments were privately-owned. Construction of socially-owned apartments came from the contributions of each working person to the Housing Contribution Fund. These contributions were obligatory and could have comprised as much as ten per cent of total income but did not ensure that an apartment would be allocated to every contributor. As reported above there were and still are numerous types of property rights. An occupancy right is greater than a tenancy right and less than full ownership. The holder of an occupancy right has the right to use the apartment for his lifetime and the right can remain with the family after his/her death. In 1997, the CRPC faced a dilemma: should it confirm occupancy rights even though its mandate referred to “real property”.

In 1997, when the property laws were still in the drafting stage, the international community advocated that CRPC process claims for occupancy rights. At this stage, discriminatory legislation was in place barring RDPs from claiming their apartments and the international community had not yet determined the legal framework for repossession of property in general. CRPC was the only body that could and did collect such claims. After the High Representative imposed the property laws in April 1998 and December 1998 in the Federation of BiH and Republika Srpska respectively, CRPC decided it would confirm rights for pre-war occupancy right holders and adopted in December 1998 a Book of Regulations on Confirmation of Occupancy Rights of Displaced Persons and Refugees. Before the entry into force of the *Law on Apartments* in the Federation of BiH in 1998, CRPC had already received 20 000 occupancy right claims. Since the laws provided for claims to be taken by municipal housing offices, CRPC stipulated certain conditions for occupancy right claims submitted after the laws were imposed: the claimant had to show that he/she was prevented from submitting a claim at the municipal housing body, he/she submitted a claim at the municipal housing body but faced inaction of the administration or received a negative decision from the municipal housing body.<sup>30</sup>

The imposed property laws on occupancy rights stipulated deadlines for filing occupancy right claims due to the nature of the property right and transition to free market principles (these socially-owned apartments with occupancy rights would eventually become privatized). However because the domestic housing bodies widely refused to accept or resolve claims, or resolved them negatively contrary to the law, the international community

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<sup>29</sup> The *Law on Property Books* in Article 64 provides:

“For confirmation of ownership, other rights and limitations on real properties the Land Registry Office will ex officio undertake necessary checks and researches and collect relevant evidence. Evidence that can be used are the following:

1. 13. Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) and all other evidence available to CRPC.”

<sup>30</sup>At this stage, there was wide-spread obstruction by the municipal housing bodies in accepting claims and issuing decisions.



decided that the deadlines for filing a claim at CRPC would be extended by six months after the passing of the domestic deadlines.<sup>31</sup>

By deciding to include occupancy rights as a part of its mandate, CRPC provided an important service to RDPs. As it turned out, occupancy right claims proved to be the most controversial in the area of property rights, despite constituting a small percentage of CRPC decisions. The thousands of claimants having these rights often faced great difficulty in submitting claims and getting their occupancy rights enforced by the municipal housing bodies. In particular, the domestic authorities stiffly resisted the implementation of CRPC decisions concerning apartments formerly owned by the JNA (military apartments).<sup>32</sup>

### **Strike out of complete or partial claims**

In terms of claims processing, all claims submitted at CRPC were reviewed at least once, and most went through multiple reviews.

CRPC, after consultation with other international organizations and donors, decided in mid-2003 on broad strike out categories in order to drastically reduce the number of undecided claims to be transferred to domestic authorities. Given that the domestic authorities were downsizing and simply not prepared to accept a large number of undecided cases from CRPC, different possible categories of potential strike outs were discussed with CRPC's partners in order to minimize the number of undecided transferred cases at the end of CRPC's mandate.

The main justifications for a strike out policy involved the avoidance of duplication by CRPC and the domestic bodies. In addition, many CRPC claimants were reported as having repossessed their claimed property, and in those cases the time and resources to issue a CRPC decision toward the end of the mandate could not be justified even though many of these claimants still sought a CRPC decision. Prior to finalising its strike out categories, CRPC analysed different strategies to address different claim types and problems with evidence.

CRPC struck out claims in cases where the property in question had already been repossessed, the property was also claimed at a domestic housing body (dual claims), claimants failed to pursue their claim, the primary property was decided and only secondary properties remained undecided, and CRPC did not have adequate evidence to confirm a right to the property. Precise numbers of strikeouts are shown in the two charts below.

In regard to striking out claims lacking sufficient evidence CRPC followed procedures that investigated all efficient sources of documentary evidence of property rights. After thorough investigation, CRPC only struck out certain claims (or the property or unit component of a claim) where CRPC could not find adequate evidence to issue a decision. This decision was based primarily on two factors: first, as a mass claims body CRPC did not have available to it traditional means of uncovering evidence that are available in adversarial proceedings (e.g., hearings and cross-examination). The domestic housing bodies and courts however did have the possibility to hold hearings and provide additional procedures that claimants could avail themselves of.

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<sup>31</sup> It is important to note that due to the nature of obstruction within the municipality of Drvar the High Representative by a Decision extended the deadline for which claimants could submit to CRPC a claim for a property in Drvar.

<sup>32</sup> More information on JNA (military apartments) is provided below.

Second, as mentioned above, due to the state of property registration after the signing of the Dayton Peace Agreement, it was presumed that in many cases where there was a lack of documentary evidence, properties claimed probably did belong to claimants. By striking out such claims rather than refusing them for lack of evidence, CRPC could better protect claimants by making no statement on the merits of their claims. All claims struck out for lack of evidence were for private property and under the property laws, affected claimants would be able to submit a claim at the domestic housing bodies or initiate proceedings before the courts. As CRPC decisions are final and binding, CRPC was concerned that by refusing a claim for lack of evidence the domestic housing bodies or courts would use such CRPC decisions against the interests of claimants.

Chart: Strike Out of Claims<sup>33</sup>

Type	Number
Claims Completely Struck Out	29 482
Claims Affected by Strike Out	78 635
<b>Grand Total</b>	<b>108117</b>

Chart: Property Units Claimed and Resolution

Property Category	Property Units Claimed and Resolution			Grand Total
	Decided	Struck Out	Transferred	
Apartments	45 141	5 010	1 339	<b>51 490</b>
Barns, stables and other agricultural objects	187 003	19 240		<b>206 243</b>
Business buildings and premises	1 340	4 405		<b>5 745</b>
Garages	11 434	41 198		<b>52 632</b>
Land	551 987	83 720		<b>635 707</b>
Other business buildings	3 489	816		<b>4 305</b>
Residential and residential/business buildings	133 842	73 819		<b>207 661</b>
Support and other buildings	65 451	7 051		<b>72 502</b>
<b>Grand Total</b>	<b>999 687</b>	<b>235 259</b>	<b>1 339</b>	<b>1 236 285</b>

**CRPC reconsidered its decisions**

Annex 7 stipulates that CRPC decisions are final and binding and is completely silent on the issue of appeals. For a detailed analysis of the final and binding nature of CRPC decisions see Annex F “The Final and Binding Nature of CRPC Decisions”. Because CRPC decisions were deemed to be final and binding by the Dayton Peace Agreement, they could not be appealed in domestic courts, including the BIH Constitutional Court.

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<sup>33</sup> “Claims Completely Struck Out” is the number of claims in which all property units have been struck out. “Claims Affected by Strike Out” is the number of claims within which one or more property units have been struck out. Within one claim, there may be strike outs, decisions as well as transferred properties.

Given its research on the state of the property registration system in 1992, as described above, CRPC was aware that the state of property relations on the ground did not match the property records in some instances. Taking this into account, as well as the principles of the European Convention on Human Rights, CRPC adopted a reconsideration procedure to give interested parties an opportunity to contest CRPC decisions. The total number of requests for reconsideration received by CRPC was 2 494 or 0.8% of decisions issued. CRPC decided and issued 1 926 reconsideration decisions, of which 382 or 20% resulted in CRPC revoking its initial decision. The Commission only reversed 0.12% decisions out of all the decisions it issued.<sup>34</sup>

The majority of reconsideration requests were against occupancy right decisions, attesting to the controversial nature of such claims. They were mostly lodged by current users on the following grounds: a) the right holders in the CRPC decision lost their occupancy right before 1 April 1992 in accordance with the *Law on Housing Relations*; b) the right holders in the decision did not have refugee status; or c) a claimant did not have the status of family household member.

Reconsideration requests against private property decisions were made mostly by current users generally alleging that they acquired the claimed property through exchange/purchase after 1 April 1992 (most common) or before 1 April 1992 (very few). Right holders named in CRPC decisions also requested reconsideration, representing far fewer cases, because they were unsatisfied with the type of confirmed right or because the decision did not confirm rights to all the claimed properties. In these cases, the problem was often due to their failure to properly register their ownership rights in the past.

### **CRPC delivered certificates to decision holders**

CRPC successfully delivered 232 268 or 75% of the total decision certificates issued. Under CRPC's procedure, claimants were notified that a decision for their claim had been issued and were requested to come pick it up. To ensure that strict security procedures were followed in the hand-over of each certificate, no certificates were sent in the post to decision holders. CRPC used its extensive network of regional offices and mobile teams to perform certificate delivery, although with funding diminished, field delivery via this system was largely phased out by CRPC near the end of 2002.

The number of undelivered certificates increased in line with the difference of time between the claim submission date and the date of issuance of the decision. During the period of CRPC's operation, many people had been displaced several times or had moved voluntarily but had failed to notify CRPC of their change in address and thus could not be notified. In other cases, CRPC was successful in notifying claimants, but they failed to pick up their certificates. It is possible that they did not do so because they managed to repossess their property through the domestic system, died, forgot they submitted a claim with CRPC, or lost interest because they were hoping for compensation for a destroyed property.<sup>35</sup>

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<sup>34</sup> All figures as of 10 December 2003. For more detailed statistics, see Annex A "CRPC Statistical Summary" to this End of Mandate Report.

<sup>35</sup> For a detailed analysis of certificate delivery procedures and statistics, see Annex E "CRPC: A Mass Claims Body".

## **Implementation of CRPC decisions**

Annex 7 of the Dayton Peace Agreement did not give CRPC the power to implement its decisions. Implementation of CRPC decisions rested squarely with the domestic authorities. However, between 1997 and 2000, the domestic authorities actively failed to implement CRPC decisions and found numerous ways to obstruct the process until 2000 when the tide changed. Some strongly criticised CRPC as impotent on account of its inability to enforce its decisions, despite it not having the mandate to do so.

The main reason for this reluctance to enforce CRPC decisions was because many people who were displaced from their homes in another part of BiH had been ‘temporarily’ housed in CRPC decision holders’ homes or because privileged persons taking advantage of war circumstances had taken over or had been rewarded with other people’s property. Obviously no domestic authority wanted to take on these sensitive cases and simply avoided evicting members of the majority ethnic group or VIPs in favour of returning minorities.

The PIC vested new powers in the High Representative in 1998, which created broad and unique tools to effectively intervene in the most obvious obstructions to return. The actions that directly affected the implementation of CRPC decisions included the establishment of a new property legal framework which was imposed by the High Representative and the creation of PLIP. Other critical actions included the removal/dismissal of obstructive officials by the High Representative, reinforcing the rule of law by focusing on officials, judges, prosecutors and police officers to ensure they were not violating the property laws and the initiation of the CRPC Repossession Tracking Database and the Information Exchange Project which made identification of double occupants, those who had repossessed their homes but had not left their temporary housing, possible.

Widespread implementation of CRPC decisions really began after CRPC actively lobbied OHR to pass executing domestic legislation obliging municipal housing bodies to implement CRPC decisions. Some in the international community opposed this law, reasoning that the obligation already existed under the Dayton Peace Agreement. However, until the obligation was established in domestic law, implementation did not occur. The High Representative imposed the *Law on Implementation of CRPC Decisions* in the Federation of BiH and the Republika Srpska in October 1999, and it proved integral to the eventual implementation of CRPC decisions on a grand scale.

### ***CRPC achieved implementation of its decisions through the Property Law Implementation Plan (PLIP)***

In 1999, CRPC became a founding member of the PLIP, which represented a collaboration of five international organizations involved in property issues – CRPC, OHR, UNHCR, OSCE and UNMIBH. PLIP’s central objectives were to ensure that repossession of property was treated as a question of the rule of law, to promote respect for civil rights over political interests, to build domestic legal processes which applied the laws impartially, and to ensure that claims for the repossession of property were processed as efficiently as possible.

PLIP developed within the Reconstruction and Return Task Force (RRTF), OHR structure and was chaired by OHR. The PLIP cell was the plan’s managerial body, comprised of expert representatives from the OHR, OSCE, UNHCR, UNMIBH and CRPC. The PLIP was a collaborative and coordinative effort which ensured the most efficient and effective use of

resources available. Collective resources were pooled and applied as necessary to resolve problems as they arose. For example, the PLIP Focal Points (field staff of OSCE, UNHCR, and UNMIBH), the field level infrastructure of the PLIP organization, directly monitored every municipality in the country.

PLIP addressed the three main obstacles to full implementation of the property laws: political obstruction, institutional incapacity, and housing shortage and abuse, through de-politicising the property issues and institutionalising the property returns process. The mechanisms deployed in order to overcome these obstacles were enhanced by close inter-agency cooperation. They included political intervention strategies, close monitoring and statistical reporting of the implementation of the property laws by the domestic housing authorities, encouraging enforcement of the law by the police, prosecutors and judges, demanding that public officials show respect for property rights, non-compliance reporting and dismissals, prosecution strategies, information campaigns, focused visits by the principals of the PLIP agencies, and joint letters.

Programmes for building the capacity of domestic institutions, such as personnel training, budgetary support, legislative reform, state and entity supervision mechanisms, and judicial reform, were part of the process.

The problem of housing abuse was directly addressed through many of these mechanisms; for example through national systems (e.g., property commissions and working groups) established by the agencies jointly with the domestic authorities and the Information Exchange Project.

Regarding housing shortages, PLIP encouraged closer relations between donors and responsible governmental bodies, which helped to develop transparent and responsible procedures for reconstruction and maximised national partnership potential.

### ***Specific contributions made by CRPC to PLIP to further the implementation of CRPC decisions***

#### *Property Checks*

CRPC performed property right checks on key officials, confirming whether, for example, elected and appointed officials, including housing officials tasked with implementing the property laws (800), the police and military (20 000), staff of international organizations (4 600) and judges and prosecutors (200) were occupying other people's property. In addition, CRPC gave OSCE access to its databases so that it could check thousands of appointed and elected officials in accordance with Provisional Election Rules to ensure that officials were complying with the property laws. These checks assisted initiatives undertaken to depoliticise the property law implementation process and to strengthen respect for rule of law.

CRPC also performed 54 800 checks for reconstruction agencies. The CRPC property checks contributed to the international rehabilitation strategy by confirming that potential beneficiaries of reconstruction assistance had a legal right to the housing identified for repair. This was critical since some 60% of all housing in BIH was partly destroyed and 18% was completely destroyed as a result of the war in BIH. CRPC also conducted 600 checks of land plots to assist OHR's land allocation policy, which contributing to preventing the illegal

allocation of private property. All these checks ensured that public funds (reconstruction assistance and land allocation) were dispensed fairly, transparently and in the public interest.

### *Legal aid*

Through its claimant assistance program, CRPC's legal advisors provided free legal advice and advocacy to its claimants and decision holders. CRPC advised claimants and decision holders on their rights and obligations under the property law framework and intervened in both general and specific cases of non-enforcement when appropriate. CRPC directly assisted more than 16 600 CRPC decision holders on their complaints of non-implementation of CRPC decisions.

### *Monitoring and intervention*

Over the years CRPC increased its cooperation and collaboration with the municipal housing bodies. CRPC legal advisors visited municipal housing authorities, cantonal ministries and second-instance bodies regularly to monitor their performance and to provide them with legal advice on complex cases. They also attended regular PLIP-related meetings at which domestic authorities were participating in order to lend their expertise and to advocate for them to act in accordance with the law. By 2002, CRPC legal advisors were having contact with housing bodies seeking legal advice on complex implementation cases and other property problems approximately 100 times per month.

### *Identifying double occupants*

In addition to protecting the rights of RDPs to their homes, the property laws also provided other rights, such as the right to alternative accommodation to temporary occupants who were currently residing in CRPC decision holders' homes. The law made provisions for alternative accommodation to some people on humanitarian grounds, such as an inability to return to pre-war homes that had been destroyed. However, the domestic authorities from the beginning abused the right to alternative accommodation to avoid having to evict current occupants and reinstate right holders. This was true even if the current occupants were double occupants (people who occupied their property and somebody else's) and therefore lacking any humanitarian reason for occupying other people's property. One of the strategies used by PLIP to overcome this obstacle was to establish municipal-level mechanisms to identify double occupants.

In 2000, CRPC began collecting from municipalities and distributing to international organizations, municipalities and relevant ministries in an *ad hoc* manner information on repossessions in the municipalities. Through its cross-referencing with its BIH-wide databases and initial data analysis, CRPC identified RDPs who, after repossessing their pre-war homes, continued occupying other peoples' property without legal basis.

In 2001, CRPC completed design of the Repossessions Tracking Database to consistently track and follow up on repossessions throughout BIH. This database included over 186 700 registered repossessions when it was transferred to the BIH Ministry of Human Rights and Refugees at the end of 2003. In order to make the Repossessions Tracking Database more efficient and to assist housing authorities to take responsibility for monitoring compliance, CRPC in collaboration with other PLIP agencies developed the Information Exchange Project. Through this project several municipalities directly shared information on

repossessions, and the data was also sent to CRPC for centralized registration, analysis, checking and reporting. As a direct result of the tracking and reporting of repossessions made possible by the Repossessions Tracking Database and the exchange of repossession data among municipalities, double occupants were identified efficiently and, with certain actions from PLIP if necessary, evicted from the homes they were occupying with no humanitarian basis. By dealing with double occupants CRPC and PLIP could counter national claims of shortage of alternative accommodation. In 2002 most of the repossessions that occurred in Eastern Republika Srpska were directly a result of the Information Exchange Project and the CRPC Repossession Tracking Database.

### *State capacity building*

As an expansion of the Repossessions Tracking Database, in 2002 CRPC initiated and established the Integrated Property System, with the cooperation of relevant domestic authorities and OSCE and UNHCR. The Integrated Property System is a database that integrates CRPC's claim and decision database (BIH-wide) and CRPC's repossession tracking database (BIH-wide) with 39 municipal claims and decisions databases.<sup>36</sup> At the time of its transfer to the BIH Ministry of Human Rights and Refugees in December 2003, the Integrated Property System contained data on 240 000 CRPC claims, 171 600 municipal claims and 186 700 repossessions as well as certain information on CRPC and municipal decisions.

The Integrated Property System was designed to assist the BIH Ministry of Human Rights and Refugees in generating consolidated lists of claimants in chronological order by date of claim, improving the current system of exchanging information on repossessions by automatically identifying double occupants and facilitating the identification of persons not eligible to alternative accommodation, reconstruction or any other kind of housing assistance. The Integrated Property System was also developed to improve monitoring property repossession procedures, especially in light of streamlining and handover of responsibilities to the Government of BIH once CRPC's mandate ended. Through the Integrated Property System, CRPC transferred to BIH a comprehensive and easy-to-use system containing all relevant data on property claims, establishing a framework by which the domestic authorities would be able to take over property issues and the implementation of Annex 7.

### *Public information campaigns*

For most of its existence, CRPC carried out targeted, large-scale information campaigns related specifically to CRPC claimants as well as to more general property issues. CRPC's expertise was frequently called on in terms of newspaper columns, news articles, radio shows, trainings, conferences and workshops designed to raise awareness of property issues. Through these campaigns CRPC widened the knowledge and shifted perceptions of current occupants and claimants about their property rights and obligations and respect for property laws and the rule of law in general. For example, while for a few years after the war current occupants believed strongly that they had every right to occupy other people's property, by 2000 current occupants began to understand and become aware of claimants' rights to return to their pre-war property and the fact that they would have to leave the homes they were currently occupying. Through the duration of its mandate, CRPC was the only BIH-based

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<sup>36</sup> See below for discussion of CRPC and municipal claim mechanisms.

institution providing information to refugees in Croatia and Serbia and Montenegro about their property rights in BiH.

### **CRPC was a check on the domestic system**

Property issues lie at the very heart of a domestic legal system. After the war, BiH's property legislation and judicial and administrative institutions were in no shape to facilitate return. CRPC was created to fill the void in the legal and administrative institutions that remained after the cessation of the conflict, which were perceived as dysfunctional or implicated in ethnic cleansing. Notwithstanding, no court system would have been able to resolve the sheer volume of claims that were expected in a reasonable timeframe. Therefore, CRPC was designed to be an independent and impartial as well as a fast-track mechanism to adjudicate property disputes, thereby assisting the domestic authorities in meeting their obligations to return RDPs to their pre-war homes. However, CRPC was never given exclusive jurisdiction to resolve return-related property claims; domestic courts and administrative bodies over a period of time began to operate in parallel with CRPC.

When CRPC began in 1996 and developed its rules and regulations, it faced war-time and even post-Dayton abandoned-property legislation in the Bosniac part of the Federation of BiH, Republika Srpska, and "Herceg Bosna," the Croat-controlled areas in the Federation of BiH. This legislation was directly or indirectly discriminatory against minority returnees, violated property rights and was inconsistent with the Dayton Peace Agreement and the European Convention on Human Rights. The provisions of the laws in each of the above areas were slightly different but they essentially used different techniques to block the return of thousands of RDPs to their pre-war homes. The techniques used included declaring property permanently abandoned, stripping people of their rights, allocating their property to others, conditioning return to reciprocity or compensation for the temporary occupant, and retroactive annulment of certain kinds of contracts. These laws were designed to consolidate ethnic cleansing.

With ethnic tensions continuing and the court system in disarray, there was no independent and impartial mechanism to solve property disputes in a fair and equitable manner and to generally regularize housing and property rights. Furthermore, the existing property registration system was outdated and ineffective, and many records had either been destroyed or removed by withdrawing armies.

In April 1998 (Federation of BiH) and December 1998 (Republika Srpska), the High Representative imposed legislation declaring that all decisions terminating the property rights of RDPs were declared null and void and creating a property repossession framework requiring administrative municipal housing bodies to take, decide and enforce claims for property repossession. In October 1999, the High Representative imposed comprehensive amendments to the laws passed in 1998 to address loopholes used by the domestic authorities to continue to obstruct the process. In addition, the *Law on Implementation of CPRC Decisions* was imposed.

Until the establishment of a property repossession legal framework was completed, CRPC served as an impartial dispute settlement mechanism precisely at a time when ethnic tensions were still flaring, discriminatory legislation blocked return, the court system was not functioning and the domestic authorities were often not accepting claims, let alone solving them fairly. Prior to the first set of property laws imposed by the High Representative in



April 1998, CRPC had already collected approximately 85 000 claims, 20% of which were for occupancy rights, and had issued about 5 500 decisions. In the first years after the Dayton Peace Agreement was signed, CRPC was in fact the primary body taking claims.

By late 1999, after OHR's imposition of the property repossession legislative framework, municipalities across BIH began accepting property claims regularly because they knew if they did not CRPC would. While many municipalities functioned better than others, the fact that municipal bodies started accepting and processing claims was a positive turning point in the return process, and with the support and oversight of PLIP, the municipal system gradually became more and more effective, notwithstanding obstructionist behaviour on occasion. In spite of the improvement in the municipal system, in 2000, PIC called for the continuation of CRPC's mandate, as discussed above, because they deemed that CRPC was still needed to serve as a check on the evolving domestic property system.

By the end of 2001, the BIH Constitutional Court ruled in two separate challenges that CRPC decisions were final and binding and that the BIH Constitutional Court did not have jurisdiction to review the merits of CRPC decisions. Several rulings of the Human Rights Chamber, starting in 2001, similarly had the effect of bolstering the weight given to "final and binding" CRPC decisions. For more detailed information on the final and binding nature of CRPC decisions see Annex F "The Final and Binding Nature of CRPC Decisions".

The final and binding nature of CRPC decisions was essential to keeping the decisions of the administrative housing bodies and courts fair and impartial. Municipal housing bodies and courts had no choice but to deal with property cases properly once CRPC decisions became an integral part of the legal system, in terms of the property laws and judicial decisions.

### **Dayton's objective achieved: CRPC decisions facilitated the return of RDPs to their pre-war homes**

By mid-2000, the necessary legal framework required for return of property began to yield increased implementation rates. By November 2003, a total of 202 207 property repossessions were recorded (PLIP statistics), contributing to a 92% implementation ratio. Within three years, the property law implementation rate increased by 71%, from 21% at end of 2000 to 41% at end of 2001 to 69% at end of 2002 to 92% by November 2003 (PLIP statistics). During this period, CRPC decisions came to be implemented widely by the domestic authorities.

According to monitoring projects carried out by CRPC, 80% of CRPC decisions confirming rights to residential property have been implemented.<sup>37</sup>

CRPC decisions enabled RDPs to return to their pre-war homes, if they so opted. From the signing of Dayton Peace Agreement until 31 May 2003 almost a million returns were registered, of which 431 700 were refugees and 522 000 were displaced persons.

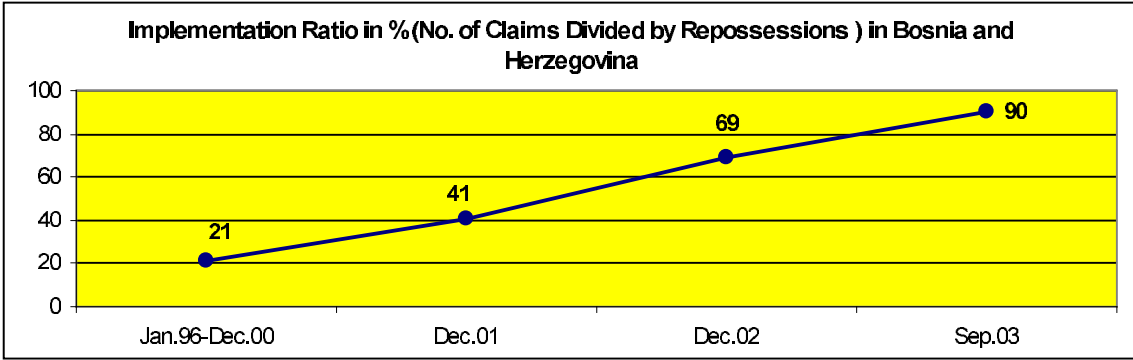
The number of minority returns when compared with the number of repossessions of property suggests that the return of property was a significant factor in the increase in minority returns

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<sup>37</sup> It is important to note that the percentage of CRPC decisions delivered (75%) and implemented (80%) cannot be correlated because the implementation rate is based only on decisions confirming residential properties. This is because PLIP statistics and the Repossessions Tracking Database (which are also not comparable because they contain different data) only track the repossessions of residential properties.

to BIH. For example, in the first five years after the Dayton Peace Agreement was signed (January 1996 to December 2000), only approximately 51 700 properties were returned and 195 200 minority returns were registered.<sup>38</sup> By December 2001, the number of properties returned (50 900 during the period December 2000-2001) had doubled to a total of 102 600. During the same period, the number of registered returns increased by 47% to 287 200. By December 2002, when the international community had declared that PLIP was operational country-wide, the number of properties returned had increased by 65% to 169 000 and the number of minority returns increased by 23% to 389 300. By September 2003, when the international community and BIH were certifying municipalities that had met the criteria of “Property Law Implementation Substantial Completion” the number of properties returned had increased an additional 17% to 198 200 and the number of minority returns increased by 10% to 428 000.

Chart: PLIP in BIH



Return of property also assisted RDPs who desired a solution other than returning to their pre-war home, by enabling them to deal with their property as they chose, by renting, selling or exchanging it.

Therefore, CRPC was successful in playing the role envisaged by the Dayton Peace Agreement. By facilitating the return of property CRPC provided RDPs with multiple solutions to their having been dispossessed of their property during the war. CRPC also contributed to the broader objectives of reconciliation, establishing rule of law and peace. While in 1996 the right to property return was hindered by various obstacles, by 2003 the right to pre-war property was an established fact.

**Transfer to the Government of BIH**

Annex 7 of the Dayton Peace Agreement provides for the establishment and operation of CRPC and specifies that the responsibility for financing and operating CRPC should pass to the Government of BIH in time. No mechanism is provided for this transfer nor is the operation of the Commission after transfer described. The date of transfer was set at five years but this date could be extended upon agreement of the Parties. Indeed, CRPC’s initial

<sup>38</sup> PLIP statistics and UNHCR statistics. It is important to note that one returned property can result in the return of one or more household members.

mandate was extended until the end of 2003 by an agreement signed by the Parties to Annex 7.<sup>39</sup>

Article XVI of Annex 7 specifically provides for the transfer itself: “[f]ive years after...[the] Annex takes effect, responsibility for the financing and operation of the Commission shall transfer...to the Government of [BIH], unless the Parties otherwise agree. In the latter case, the Commission shall continue to operate as provided above.”

Article IX of Annex 7 describes the authority of the various parties to appoint members to the Commission and provides for their term of office.<sup>40</sup> Item 4 of this Article states that appointments made to the Commission after the transfer are to be made by the Presidency of BIH.

Article II(5) of Annex 4 of the Dayton Peace Agreement, which establishes the Constitution of BIH, guarantees:

All refugees and displaced persons have the right freely to return to their homes of origin. They have the right, in accordance with Annex 7 to the [GFAP], to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void.

This strongly indicates that RDPs have a constitutionally guaranteed right to restoration of property rights in accordance with Annex 7, which establishes CRPC.

Article III(5)(a) of Annex 4 states that “[BIH] shall assume responsibility for such other matters as ...are provided for in Annexes 5 through 8 to the [GFAP]....”

The Government of BIH therefore had an obligation to assume responsibility of CRPC by the end of 2003 according to Annex 7. This was wisely envisioned by the drafters of Annex 7 because the work of CRPC as initially established is not complete and aspects of it need to continue beyond 2003.

CRPC was established to fill the void in the administrative and judicial systems that existed after the war. Annex 7 envisaged that CRPC would ensure that principles of justice, human rights and the rule of law would be applied to RDPs seeking to claim property they lost as a result of the war. CRPC was therefore created as an international mechanism to bypass the domestic legal system, and its decisions were given a superior legal status so that no domestic institution could overrule its decisions. It followed that CRPC should transfer its remaining functions when the Government of BIH had adequately functioning systems of its own in place to restore RDPs' property rights.

The timing of the transfer was determined by the Commission's mandate which expired at the end of 2003, as well as the fact that various international stakeholders wished, in a time of

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<sup>39</sup> On 29 March 2001, the BIH Council of Ministers decided to extend the Headquarters Agreement between CRPC and BIH.

<sup>40</sup> The Commission was to be composed of nine members. Four of these members were to be appointed by the Federation of BIH, two members were to be appointed by Republika Srpska, and the remaining three were to be appointed by the President of the European Court of Human Rights. The President of the European Court of Human Rights also had the authority to appoint the Chairman of the Commission from one of these latter three appointees.

declining funds and shifting international interests, to see the domestic authorities in BIH assume responsibility for the property repossession/return process. Annex 7 is however completely silent on the mechanism for transfer and only specifies that responsibility for financing and operating the “Commission” should pass to the Government of BIH in time. Annex 7 also does not envision the possibility of transferring specific functions without transferring the entire Commission. Therefore, to prevent major disruptions, the transition process needed to be carefully planned and initiated in a timely manner so as to avoid major obstacles that could be encountered in the transfer of an international body to a government.

CRPC first began internal discussions on the issue of transfer in 1999. In September 2002, CRPC prepared and distributed a paper entitled “Transfer of CRPC – Discussion Paper” to various international organizations, including OHR, and all of CRPC’s donors. This paper was produced in response to no actions or preparations being made for the transfer by the Government of BIH. Moreover, its objective was to initiate substantive discussions early on to ensure that a proper transfer would take place at the end of 2003. In the Discussion Paper, CRPC made it very clear that a legal framework, including an agreement signed by the Parties to Annex 7 and implementing legislation, would be required to ensure a proper transfer.

In initial discussions with OHR, OSCE, UNHCR, the EC and the US, it was concluded that the transfer should take into account already existing institutions carrying out similar functions in order to avoid redundancy and unnecessary costs and to ensure long-term viability.

In negotiations with domestic and international stakeholders at various levels it had been agreed that the following functions would be transferred:

- Undecided claims (claims that required a hearing and which CRPC as a mass claims body did not have the financial resources nor time to resolve);
- Reconsideration of CRPC decisions (although Annex 7 states that CRPC decisions are “final and binding”, CRPC established a procedure to reconsider its decisions);
- Numerous databases, which include property records, and data on claims and repossessions; and
- Undelivered certificates and CRPC archival materials.

Recognizing that each of the above functions would not be transferred to one body, CRPC had identified in September 2002 the following possible alternative models of transfer:

- Institutionalisation of CRPC into a free-standing governmental agency dealing with reconsideration requests of CRPC decisions and database management (for example by creating a body financed and operated by the Government of BIH but independent of it, such as the Office of the Ombudsman).
- Full merger of CRPC and all of its operations and financing into a branch of the BIH Ministry of Human Rights and Refugees.
- Disposal of CRPC entirely and assignment of property issues to the existing entity administrative and court structures.
- Transformation of CRPC into a court, acting as a formal second instance body for administrative (property) decisions as well as previously decided CRPC decisions.
- A state transfer law on CRPC decisions providing that the only possibility for review of CRPC decisions (after expiry of CRPC's mandate) would be

reconsideration by a new “special appeal panel” with a power to grant leave to appeal further to the administrative appellate division of the Court of BIH.

While there was no agreement among various stakeholders on the models above, there was agreement that the legal basis for the transfer would be an overall Framework Transfer Agreement.

From December 2002, CRPC was actively engaged in discussions with domestic authorities and PLIP agencies (OHR, OSCE, and UNHCR) on contentious transfer issues. To initiate concrete discussions and since there was agreement among the stakeholders that a Framework Transfer Agreement was necessary, on 23 December 2002 CRPC circulated the first draft of a possible Framework Transfer Agreement. By the end of January 2003, a complete package, consisting of a Framework Transfer Agreement and legislative amendments/laws, had been drafted, circulated and concretely discussed among relevant stakeholders at the working level.

The BIH Council of Ministers on 3 April 2003 tasked the BIH Ministry of Justice, with the assistance of the BIH Ministry of Human Rights and Refugees, to prepare a proposal on an agreement on the transfer of competencies of CRPC to the institutions in BIH.

The Framework Transfer Agreement and legislative amendments/laws were discussed and worked on in several expert working group meetings and high level meetings (including meetings of the State Commission for Refugees and Displaced Persons) from December 2002 to August 2003, with international and domestic partners such as OHR, UNHCR, OSCE, the BIH Ministry of Human Rights and Refugees, the BIH Ministry of Justice (including the Court of BIH), the Federation of BIH Ministry for Urban Planning and Environment, and the Republika Srpska Ministry for Displaced Persons and Refugees.

After 10 months of negotiation (and delay by the BIH Ministry of Justice and the entities) and multiple revisions, the text of “The Agreement between BIH, FBiH, and RS on the Transfer of Competencies, and Continuation of Financing and Operations of CRPC pursuant to Article XVI of Annex 7 of the GFAP” (Framework Transfer Agreement) was finalized among relevant stakeholders in October 2003. This agreement then had to be signed by the Parties to Annex 7, the Republic of BIH, Federation of BIH and Republika Srpska.

The Framework Transfer Agreement set out to whom various functions of CRPC would be transferred.

However, the primary issue which held up the finalization of the Framework Transfer Agreement was the selection of a body to reconsider CRPC decisions post-2003. At first CRPC had proposed the Court of BIH. The BIH Ministry of Justice and the Court of BIH presented strong legal arguments against this, which could not be overcome. As a temporary solution in order to get the Framework Transfer Agreement signed, CRPC recommended a clause which would oblige the signatory parties to this agreement to determine the body within 60 days of signing, which the BIH Council of Ministers did not accept. CRPC then proposed an *ad hoc* domestic body (a modified CRPC) that would be tasked solely with reconsiderations. Certain international stakeholders had significant reservations to this proposal. After several months of discussions and debate on identifying an appropriate body to takeover the reconsideration function of CRPC, it was finally decided that the Framework Transfer Agreement would provide for the continuation of CRPC. However, the sole purpose

of the body (future domestic CRPC) would be to reconsider CRPC decisions and it would be composed of domestic Commissioners.

This was decided because it was clear that no institution in BIH could perform this function and be ready to take over the reconsideration process by January 2004 (in part because the review of CRPC decisions had been declared as outside the jurisdiction of the BIH Constitutional Court, BIH's highest court, and significant legislative changes would be required if the Court of BIH took over this function). In addition, OHR Legal stated in an opinion letter that Annex 7 actually foresaw the continuation of CRPC as a body with the main difference being that the Commissioners would be appointed by the Presidency of BIH and that BIH would be responsible for its operations and financing.

Without this Framework Transfer Agreement being signed, CRPC's two most critical functions - reconsidering CRPC decisions and deciding remaining undecided claims - could not be transferred properly, compromising the rights of certain RDPs. Under the proposed Framework Transfer Agreement as of the writing of this End of Mandate Report, the future domestic CRPC would be charged with deciding upon reconsideration cases and the municipalities would be responsible for resolving undecided CRPC claims.

Within the proposed Framework Transfer Agreement as of the writing of this End of Mandate Report, in order for undecided CRPC claims to be effectively transferred to the competent administrative organs which are under the jurisdiction of the entities, the entities must pass implementing legislation in order to legally assume responsibility for resolving these claims. The relevant text of such legislation was finalized mid-2003. Both the Republika Srpska and the Federation of BIH initiated procedures to pass such legislation in 2003, and in early 2004, the Federation of BIH and the Republika Srpska passed legislation on the transfer and resolution of undecided CRPC claims.<sup>41</sup>

CRPC obtained written confirmations from the Republika Srpska Ministry of Refugees and Displaced Persons, the Brcko Mayor's office and nine cantons in the Federation of BIH (there are no undecided claims for one canton) that they will physically takeover undecided CRPC claims and distribute them to the competent administrative bodies.

However, CRPC was not in a position to complete the transfer of the reconsideration procedure and undecided claims as planned due to the Framework Transfer Agreement not being signed as of the writing of this End of Mandate Report. CRPC prepared 1 339 undecided claims for occupancy rights and 568 undecided reconsideration requests to be transferred prior to the end of 2003. While CRPC completed all activities required to do the transfer, signing the Framework Transfer Agreement is the responsibility of the domestic authorities.

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<sup>41</sup> Federation of BIH *Law on Transfer and Determination of Undecided Claims for Repossession of Occupancy Right Apartments or Privately Owned Real Property Filed with the Commission for Real Property Claims of Displaced Persons and Refugees* (published in the Official Gazette of Federation of BIH No. 06/04); and Republika Srpska *Law on Transfer and Determination of Undecided Claims for Repossession of Occupancy Right Apartments or Privately Owned Real Property Filed with the Commission for Real Property Claims of Displaced Persons and Refugees* (published in the Official Gazette of Republika Srpska No. 03/04).

Other important functions of CRPC were still transferred. Since Annex 7 stipulates that the Government of BIH assumes responsibility for CRPC, CRPC engaged in bilateral negotiations with certain BIH Ministries to transfer specific functions to them as is also envisaged in the Framework Transfer Agreement. This applies to CRPC databases, undelivered certificates and archival materials, including all 240 233 claim application files.

Concerning the transfer of CRPC databases, CRPC negotiated and drafted a bilateral agreement with the BIH Ministry of Human Rights and Refugees,<sup>42</sup> which was signed on 5 November 2003. The BIH Ministry of Human Rights and Refugees physically received from CRPC donated information technology hardware such as servers, computers, printers, furniture and databases (including the Repossessions Tracking Database and the Integrated Property System) by 24 December 2003. CRPC's cooperation with this Ministry was notable and it is expected that they will assume responsibility for maintaining and even expanding on these databases, which will be a valuable resource for future reconstruction activities.

On 31 October 2003, CRPC signed three bilateral agreements on the transfer of CRPC's Cadastre Database with the Federation of BIH Geodetic Administration, the Republika Srpska Geodetic Administration and the BIH Ministry of Civil Affairs.<sup>43</sup> CRPC's Cadastre Database was physically handed over to them on the same day. CRPC's Cadastre Database provides the most comprehensive snapshot of pre-war property records in BIH that may hopefully serve in establishing a viable property registration system in the future.

On 31 October 2003, CRPC also signed an agreement with the BIH Archives on the transfer of CRPC archives and undelivered certificates.<sup>44</sup> The BIH Archives took possession of CRPC's 79 084 undelivered certificates on 19 December 2003 and finished receiving all of CRPC's archival materials (including 240 233 claim application files) by 31 December 2003. Pursuant to this agreement, the BIH Archives will act as a depository where claimants can go post-2003 to pick up their CRPC certificates if they have been issued one. The agreement also provides access to claim files for claimants and the domestic CRPC that should reconsider CRPC decisions. To ensure a proper takeover of such a significant task, the BIH Archives cooperated extensively with CRPC and also agreed to hire a former CRPC archives clerk familiar with CRPC archival materials and systems.

On 7 November 2003, the Chairman of CRPC, Jean-Pierre Hocke, wrote a letter to the High Representative<sup>45</sup> updating him on developments in the transfer process and CRPC's excellent cooperation in achieving bilateral agreements with the BIH Ministry of Human Rights and Refugees, the BIH Archives, the Federation of BIH Geodetic Administration, the Republika Srpska Geodetic Administration and the BIH Ministry of Civil Affairs. However, it was also brought to the attention of the High Representative CRPC's concerns that the overall Framework Transfer Agreement and necessary laws would not be passed in time.

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<sup>42</sup> Protocol between the Ministry for Human Rights and Refugees of BIH and Commission for Real Property Claims of Displaced Persons and Refugees on Transfer and Usage of Databases, signed on 5 November 2003.

<sup>43</sup> Memorandum of Understanding between Republic Administration for Geodetic and Property Rights Affairs of the Republika Srpska and Commission for Real Property Claims of Displaced Persons and Refugees, signed on 31 October 2003. Memorandum of Understanding between Administration for Geodetic and Property Rights Affairs of the Federation and Commission for Real Property Claims of Displaced Persons and Refugees, signed on 31 October 2003. Memorandum of Understanding between Ministry of Civilian Affairs of BIH and Commission for Real Property Claims of Displaced Persons and Refugees, signed on 31 October 2003.

<sup>44</sup> Contract between CRPC and the BIH Archives, signed on 31 October 2003.

<sup>45</sup> See Annex G "Letter from Jean-Pierre Hocke to Paddy Ashdown, dated 7 November 2003".

The Chairman requested the High Representative's intervention, as it was now clearly required to ensure that the transfer was completed properly before the end of the year. The High Representative is charged with the implementation of the civilian aspects of the Dayton Peace Agreement. In this letter, CRPC outlined its concerns that the Federation of BIH could hold up the process due to CRPC's policy on (JNA) military apartments<sup>46</sup>, despite the written support of the OHR and OSCE for CRPC's policy. It was brought to the attention of the High Representative that the Federation of BIH Minister of Defence and the Federation of BIH Minister of Urban Planning and Environment had been applying pressure on CRPC to change its rules or to reverse certain decisions confirming rights to JNA (military) apartments and that there was a credible risk that CRPC decisions could be unravelled in the future. Indeed, as of the writing of this End of Mandate Report, the Federation of BIH refused to sign the Framework Transfer Agreement for this precise reason, and also expressed an interest in re-negotiating the final and binding nature of certain CRPC decisions. The factors explaining the failure of the signing of the Framework Transfer Agreement underscore the very reasons why CRPC was needed as a check on the domestic authorities: CRPC, as an independent and impartial body, issued decisions confirming property rights in line with non-discriminatory domestic law as well as international law, the European Convention on Human Rights, and decisions of the Human Rights Chamber (which was the international court in BIH competent for applying the European Convention on Human Rights). Hence, it is critical that the High Representative ensures that these principles of law are adhered to by the Government of BIH.

The above briefly outlines CRPC's efforts to ensure a proper transfer to the Government of BIH. Given the complexity involved in any transition, the transfer of CRPC was planned as a phased one. CRPC began the transfer process as soon as it could to avoid a last minute hand

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<sup>46</sup> The issue of JNA (military) apartments is a legally and politically complex one that cannot be comprehensively addressed in this End of Mandate Report, as to treat the issue fairly would require a very detailed document. However, in brief, JNA (military) apartments are apartments that were owned by the former Yugoslavian Popular Army and allocated to people who became occupancy right holders to them. While these apartments had been socially-owned property, they were also the first apartments to be privatized before the war. Thus, many of the occupants of these apartments who left these apartments during or after the war were either private property or occupancy right holders, but also, more controversially, members of the former JNA who were perceived by the authorities in BIH as persons who had actively engaged in war against BIH and hence did not deserve the right of property return.

In July 1999, the High Representative imposed amendments to the Federation of BIH *Law on Apartments* which included an article (3a) which provided an exception (the sole one in the entire law) to the general right of repossession of apartments that had been abandoned after 30 April 1991. The exception applied to JNA (military) apartments and in general affected certain people who had been in the Yugoslavian Popular Army (JNA) and who had been owners or occupancy right holders of these JNA (military) apartments. Article 3a deemed that these certain people were not considered as refugees for the purposes of this law and hence did not have the right to the repossession of these apartments.

Article 3a of this law was challenged at the Human Rights Chamber, which ruled in several applications that certain provisions of this article were in violation of the European Convention on Human Rights. While the Human Rights Chamber ordered the Federation of BIH to amend Article 3a, it did so in a manner that CRPC and others in the international community considered to maintain elements that were not in line with the Chamber's decisions, the European Convention on Human Rights and international law. Consequently, CRPC adopted a policy and decided its claims for JNA (military) apartments disregarding certain provisions of Article 3a that did not meet human rights standards. According to Annex 7 of the Dayton Peace Agreement, the Commission was only obliged to consider domestic law. OHR and OSCE in a written letter to the Federation of BIH Ministry of Defence and the Federation of Urban Planning and Environment supported the policy and decisions of CRPC regarding JNA (military) apartments.



over. A gradual transfer was designed in order to enable CRPC to provide its expertise and experience to domestic authorities taking over CRPC functions.

As of the writing of this End of Mandate Report the General Framework Agreement was not signed by the governments of BIH, and, as a consequence, undecided claims and the reconsideration process/undecided reconsideration requests were not transferred to the domestic authorities.

## **Conclusion**<sup>47</sup>

The Dayton Peace Agreement placed a particularly high priority on the return of RDPs to their pre-war homes and Annex 7 is completely devoted to ensuring the achievement of this objective. The drafters of the Dayton Peace Agreement had hoped that through returns the broader objectives of establishing lasting peace and a democratic civic society in BIH could be achieved.

By fulfilling its mandate, in particular by issuing 311 757 final and binding decisions, plus 1 926 decisions on reconsideration, during the course of eight years, CRPC facilitated the return of thousands of RDPs to their pre-war homes or helped them to find a durable solution through the exchange, sale or lease of their property.

CRPC succeeded in accomplishing its objectives despite the lack of stable funding and the post-conflict environment in which it had to operate.

Over the course of its eight-year mandate CRPC:

- Collected 240 233 claim applications for 319 220 properties for 360 246 claimants through 23 regional offices in seven countries.
- Adopted 311 757 final and binding decisions confirming property rights.
- Conducted over 81 000 property right checks for reconstruction agencies and for PLIP efforts.
- Collected, verified, and configured computerized land cadastre and Real Property Cadastre records of private property evidence, for a total of 86 municipalities in CRPC's Cadastre Database; and performed additional verification procedures for claims for properties in those municipalities outside CRPC's Cadastre Database.
- Assisted more than 16 600 CRPC decision holders in the implementation of their decisions.
- Designed and maintained the Repossessions Tracking Database and the Integrated Property System. CRPC integrated in total 39 major municipal claims databases containing data on 171 600 municipal claims into the Integrated Property System. CRPC processed and entered 186 700 repossession cases into the Repossessions Tracking Database which was then integrated into the Integrated Property System.
- Conceived and developed the Information Exchange Project in collaboration with other PLIP agencies.
- Contributed to drafting the property legislation that established the framework for property repossession in BIH.

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<sup>47</sup> Further information, e.g., plenary minutes, transfer agreements, Books of Regulations, and public information material, can be obtained from Jean-Pierre Hocke at [jphocke@bluewin.ch](mailto:jphocke@bluewin.ch), Hans Van Houtte at [Hans.VanHoutte@Law.kuleuven.ac.be](mailto:Hans.VanHoutte@Law.kuleuven.ac.be), Maria Rita Saulle at Facolta di Scienze Politiche, Universita di Roma 'La Sapienza', P.le Aldo Moro, 5-00185 Roma, Italy or Steven Segal at [segalsa@aol.com](mailto:segalsa@aol.com).

- Provided information and training on property laws and implementation of CRPC decisions.
- Transferred certain functions (databases, archives, and undelivered certificates) to the institutions in BIH.
- Cooperated with other international bodies.

These activities of CRPC contributed to delivering justice to RDPs, building the capacity of domestic institutions, strengthening the rule of law, and preparing the groundwork for a viable property registration system necessary for a functioning real estate market.

CRPC sets an important precedent for future international efforts that might be established in post-conflict situations defined by ethnic conflict and discrimination, a mass RDP crisis, grand-scale housing destruction and an underdeveloped court and property registration system.

### **Lessons learned**

Lessons learned and suggestions for future designers and donors of property commissions in post-conflict situations include the following, in summary form:

1. Transferring international knowledge and capacity to governments in transition or in a post-conflict environment is one of the greatest challenges facing international development. The task of providing assistance to communities is relatively easy in comparison to ensuring that systems are sustained after the international community departs.
2. One of CRPC's strengths was its National Commissioners. Extensive employment of national staff and national legal experts engenders cooperative efforts among disparate groups of claimants, and serves as local buy-in for decisions taken.
3. Conflict management and building of peace and security requires a holistic approach which in addition to focusing on traditional factors such as military and political factors also requires focus on factors such as humanitarian issues, human rights, economic, social and development aspects.
4. Laying the basis for rule of law in the aftermath of a conflict such as the one in BIH calls for closer attention to the building of state authority and capacity at local levels. The settlements found in Annex 7 of the Dayton Peace Agreement faced their greatest challenges at the local level.
5. Establishing early on clear competencies of international and domestic bodies both for determining claims and ensuring enforcement of decisions is crucial.
6. Insisting on multi-year funding with donor commitments upfront prior to establishing a framework for restitution of property rights is also critical. CRPC struggled yearly to effectively fulfil its mandate given its dependence on voluntary contributions, especially during times of increasing donor fatigue.
7. Thorough investigations must be made as to what pre-conflict rights existed and what evidence is available prior to establishing a framework for restitution of property rights.

Very competent staff is needed to do this groundwork and information should be obtained from various sources in order to not be led down the wrong track by any domestic actors with incentive to mislead.

8. Consideration should be given to the fact that only a mass claims processing body using single-party, document-based proceedings with reliance on highly sophisticated claims management software can process and decide a large volume of claims for properties countrywide. However, because of the very nature of mass claims processing, a percentage of claims may not be resolvable. Consequently, with proper research and planning it may be possible to decide early on to exclude submission of such claims and inform claimants of other mechanisms, if available, that should be used for such claims.
9. The framework for restitution of property rights must be made with initial international involvement. This should not be done only through domestic courts; however domestic laws, including implementing legislation, must be put into force early on to facilitate the process.
10. An impartial and independent body free of improper political or ethnic/religious influence is critical for the return of particularly valuable or ethnically significant properties.
11. Structured coordination among international and domestic bodies with strong field presence of international agencies, as occurred with PLIP and RRTF, can significantly affect return of property rights.
12. Centralized data systems that ensure that domestic and international claims determination procedures are in harmony and not duplicative must be set up and managed.
13. Consideration should be given to drawing up a long-term plan of action (start up, phasing down, and winding up) from the beginning to the end to establish benchmarks and timelines and to identify potential problems, including a personnel drawdown plan that eventually would replace all international staff with nationals.
14. Where transfer from international hands to domestic capacity is envisaged, transfer of functions to domestic authorities should not occur until domestic capacity has been developed and is fully functional. Consequently, a capacity building strategy must be developed in conjunction with a long-term plan of action regarding the work of the property claims commission.
15. Tremendous international will and international-community-fostered domestic will are absolutely essential to successfully returning property. Until a consistent, strong commitment of domestic authorities to enforce CRPC decisions confirming property rights occurred, enforcement of CRPC decisions was minimal. The voluntary, proactive assistance of the entity governments was slow in arriving, but was critical.
16. Where exclusive jurisdiction is not established, as in the case of CRPC, define precisely the relationship between the property commission and other competent domestic authorities (supremacy and second instance). A consultation mechanism established between domestic bodies and the property claims commission would help avoid waste of resources because of duplication of efforts and forum shopping as well as increased complexity and legal uncertainty due to conflicting decisions.

17. Mechanisms for public information and claimant assistance must be budgeted and planned for, as well as establishing a tracking mechanism or strike out procedures in advance to deal with the problem of delivering certificates and contacting claimants because of multiple movements of claimants.
18. It is imperative that after a war an exact housing stock is taken so that a comprehensive plan on both construction and reconstruction can be utilized in the service of fairness and cost effectiveness.